

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090
**U.S. Citizenship
and Immigration
Services**



H6



DATE: **APR 23 2012** OFFICE: PORTLAND, MAINE

FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver request was denied by the Field Office Director, Portland, Maine, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Brazil who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B), for having been unlawfully present in the United States for more than one year and seeking admission within 10 years of her last departure from the United States. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with her husband in the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of Field Office Director*, dated August 17, 2009.

On appeal, counsel asserts that the United States Citizenship and Immigration Services (USCIS) failed to adequately consider the evidence of hardship submitted in support of the applicant's waiver application because the applicant provides essential emotional and financial support to her U.S. citizen spouse, who suffers from diabetes and is at risk for stroke and renal failure. *See Form I-290B, Notice of Appeal or Motion*, dated September 18, 2009.

The record includes, but is not limited to: brief and motion from counsel; letters of support; identity, financial, and medical documents; articles; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, in pertinent part:

(B) ALIENS UNLAWFULLY PRESENT.-

(i) In General.- Any alien (other than an alien lawfully admitted for permanent residence) who-

...

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

...

(v) Waiver.-The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record establishes that the applicant was admitted to the United States as a B-2 Visitor, valid until March 3, 2001. However, the applicant remained until December 22, 2006, when she voluntarily returned to Brazil. The applicant accrued unlawful presence from March 4, 2001, until December 22, 2006, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, she is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or the applicant's children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived

outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel contends that the applicant’s spouse would suffer extreme medical, emotional, and financial hardship upon separation from the applicant because the spouse has a poor memory and would be unable to adequately care for himself as the applicant ensures that the spouse takes his prescription medications and that he follows the dietary restrictions because of his diabetes. Counsel also contends that the applicant is the only person who can administer the spouse’s daily insulin shots, ensures that his medical condition does not deteriorate, and helps him cope with the effects of his diabetes – anxiety and depression. And, counsel contends that the spouse feels “complete” with the applicant, that he cannot imagine his life without her, and that she is the sole breadwinner as the applicant is no longer working.

The spouse further contends that during the applicant’s absence, his work suffered a lot because he forgot to take his medications on some days and ate foods that were not within his dietary

restrictions. He also indicates that he has tried to administer his insulin shots, but has been unable to do so successfully. And, he indicates that he has been under extreme stress, in part, because of the applicant's immigration status, and that he has become paralyzed on the left side of his face. Additionally, the applicant contends that since the spouse's diagnosis of diabetes in 2003, she has noticed that he has become more aggressive towards the people that he loves, his diabetes has gotten worse, and he has been depressed and constantly has anxiety attacks.

The evidence on the record is sufficient to establish that the applicant's spouse is being treated for diabetes through oral medications and insulin shots, and that the spouse has experienced unexplained paralysis to the right side of his face and has been advised to follow-up with a neurologist. And, because of these physical conditions, the spouse may experience some hardship in the applicant's absence from the United States. However, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualified relatives of inadmissible individuals. The AAO notes that the applicant's medical records do not include any specific indication how the applicant's presence is necessary to assist the spouse with his diabetes. Rather, the record only includes a general statement from the spouse's treating physician that the spouse has a diagnosis of diabetes, for which the physician "believe[s] it is important for [the spouse] to have [the applicant] help him manage his medical condition." *Medical Letter Issued by Dr. Krishnamoorthy Rao*, dated December 5, 2008. And, the medical records do not include any indication that the applicant's presence is necessary to assist the spouse with his unexplained facial paralysis: "... Patient discharged to home, Patient ambulates without assistance, Transported via patient driving, Patient unaccompanied, ..." *Saints Medical Center Medical Records Record*, dated September 10, 2009; see *Saints Medical Center Medical Records Record*, dated September 12, 2009. Moreover, the AAO notes that the record does not include any specific evidence of the spouse's mental health or his inability to function in the applicant's absence. Accordingly, the AAO cannot conclude that the record establishes that the spouse's physical and emotional hardship would go beyond the norm.

Further, the record does not include sufficient evidence that the spouse is unable to financially support his household or to meet his financial obligations in the applicant's absence. Also, the record does not contain any country conditions information concerning the applicant's employment opportunities in Brazil to support hers and the spouse's households.

The AAO notes the concerns regarding the applicant's spouse's physical and mental conditions as well as his financial obligations, but finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Additionally, counsel contends that the applicant's spouse would suffer extreme hardship upon relocating to Brazil because of his age, health problems and the inadequate treatment of diabetes, and inability to find employment that would enable him to support his family and provide for his medical expenses. The spouse further discusses that when he went to Brazil to be with the applicant and her mother, he realized that he could never live there again because of the difficulty in finding necessary medical prescriptions.

The AAO notes that the record reflects that the applicant's spouse is a native of Brazil and that the record does not include any evidence whether he continues to maintain social or financial ties there. Also, the record does not include any country conditions information concerning economic, political, or labor conditions and employment opportunities in Brazil and how such conditions would impact the spouse. However, the AAO notes that the record does include a July 2007 report that discusses the treatment of type 2 diabetes mellitus in the private sector in nine Latin American countries, including Brazil. While the AAO acknowledges the findings made in the report, the AAO finds that the report is a general discussion about a specific cohort and the record is unclear concerning whether the spouse is similarly-situated to the cohort. Accordingly, the AAO finds that the record does not establish that the spouse's hardship goes beyond what is normally experienced by family members of inadmissible individuals.

Although the applicant's spouse may experience some hardships as a result of relocation to Brazil with the applicant, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of relocation with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.