U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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Date: DEC 1 2 2012 Office: ROME FILE: [redacted]

IN RE: [redacted]

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:

SELF-REPRESENTED

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Rome, Italy. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of Brazil and citizen of Portugal who entered the United States without authorization in 1995 and did not depart the United States until 2011. The applicant was thus found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility to reside in the United States with his U.S. citizen spouse and children, born in 2006 and 2010.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 18, 2012.

On appeal, the applicant submits the following: a letter; financial documentation; a letter from the applicant's spouse; a copy of a medication prescribed to the applicant's spouse; and a letter from the applicant's sister-in-law with referenced medical documentation. The entire record was reviewed and considered in rendering this decision.

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

> Aliens Unlawfully Present.-
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> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (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.
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> . . . .
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> (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...

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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant, their children, the applicant's spouse's sister and/or mother can be considered only insofar as it results in hardship to a qualifying relative. 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-Moralez,* 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.

The applicant's U.S. citizen spouse contends that she will suffer emotional and financial hardship were she to return to the United States to reside while the applicant remains abroad due to his inadmissibility. In a declaration the applicant's spouse states that she was forced to relocate to Portugal because she could not afford to support herself and her children on her own and due to her emotional inability to be without her husband. *Letter from Luciana M. Damascena*, dated July 2, 2012.

To begin, no documentation has been provided outlining the specific emotional hardships the applicant's spouse contends she experienced prior to deciding to relocate to Portugal to reside with her husband as a result of his inadmissibility. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Further, with respect to the applicant's spouse's contention that she was unable to support herself on her own, no financial documentation has been provided establishing the applicant's and his spouse's income and expenses and assets and liabilities prior to the applicant's spouse's relocation abroad, to establish that as a result of her husbands' relocation, the applicant's spouse was experiencing financial hardship. The AAO notes that the record establishes that the applicant's spouse has been self-employed since August 2000 as an interpreter. Nor has any documentation been provided establishing the specific financial contributions made by the applicant prior to his departure from the United States to support the assertion that due to his relocation abroad, his wife was experiencing financial hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she returns to the United States to reside, is typical to

individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record.

In regards to relocating abroad to reside with the applicant due to his inadmissibility, the record establishes that the applicant's spouse has been residing with the applicant in Portugal. The applicant's spouse contends that living with her husband in Portugal is causing her numerous hardships. To begin, the applicant's spouse details that she misses her home, her community, her employment, her church and her family, most notably her sister. She further explains that her children are experiencing hardship in Portugal and want to return to the United States. In addition, the applicant's spouse details that she is more than half way through a Master's program but were she to remain abroad, she would have to give that up. Finally, the applicant's spouse contends that were she to remain abroad, she would not be able to pay her student loans and they would certainly lose their family home. *Letter from Luciana M. Damascena,* dated March 18, 2012. In a separate statement, the applicant states that she has Asthma and has now run out of medicines provided to her by her doctors in the United States. She notes that she cannot afford to go to a private doctor or purchase medicine. She further explains that she has tried to use the public health system in Portugal but has yet to be able to get an appointment. Finally, the applicant's spouse details that although she is employed in Portugal, they can barely make ends meet and have to rely on family members to assist them financially. *Supra* at 1-2. In his own statement, the applicant maintains that he has not been able to find a job in Portugal even though he has been looking. His wife, he notes, was able to obtain employment but she averages 200 euros per month, less than half of the minimum wage, as a free-lance teacher. Further, he explains that they lost their renters for their home in New Jersey and cannot pay their mortgage. *See Letter from Jaime Felicio Damascena,* dated July 2, 2012 and *Form I-290B,* dated July 12, 2012.

To begin, no supporting documentation has been provided establishing the emotional hardships the applicant's spouse and children are experiencing in Portugal. As for the applicant's spouse's asthma, no supporting documentation has been provided establishing her current medical condition, the severity of the situation, and what specific hardships she would encounter were she to remain in Portugal with her husband. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship. Alternatively, it has not been established that the applicant's spouse is unable to return to the United States regularly to obtain medical care and medications. Further, no supporting documentation has been provided to establish that living in Portugal is causing the applicant's spouse financial hardship. Nor has any supporting documentation been provided establishing that the applicant has been unable to obtain employment. As for the applicant's spouse's academic plans, the record contains a letter from Liberty University, dated March 5, 2012, noting that the applicant's spouse is currently enrolled and is expected to graduate in May 2015. No reference is made to the applicant's spouse's residence in Portugal and its implications. Finally, the AAO notes that both the applicant and his spouse are natives of Brazil. No explanation has been given as to why they would not be able to return to Brazil to reside as a result of the applicant's inadmissibility.

The record, reviewed in its entirety, does not support a finding that the applicant's spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships she would face rise to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, 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. The waiver application is denied.