

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Administrative Appeals Office*  
20 Massachusetts Avenue, NW, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

H6

[REDACTED]

DATE: **DEC 14 2012**

OFFICE: SANTA ANA, CA

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:

[REDACTED]

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.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Form I-601, Application for Waiver of Grounds of Inadmissibility was denied by the Field Office Director, Santa Ana, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects 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)(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 country for more than one year and seeking readmission within ten years of her departure from the United States. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative. 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 remain in the United States with her husband.

In a decision dated August 18, 2011, the director concluded the applicant failed to establish that her spouse would experience extreme hardship if she were denied admission into the United States. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that her husband will experience extreme emotional, financial, and physical hardship if she is denied admission into the United States. In support of the assertions, counsel submits letters from the applicant and her husband; psychological evaluations of the applicant's husband; medical documentation; and financial information. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B)(i) of the Act provides in pertinent part that any alien 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.

The record reflects that on October 8, 1999, the applicant was admitted into the United States with a B2 visitor visa and departed on December 16, 2003. On January 14, 2004, she was again admitted into the United States with a B2 visitor and departed on March 23, 2009. She was admitted into the United States with a B2 visitor visa on July 25, 2009, and she has not departed the country since that time.

Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure, remains in force until the alien has been absent from the United States for ten years. The applicant was last unlawfully present in the United States for over one year between July 13, 2004 and March 22, 2009. She has not been absent from the country for ten years. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

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

Waiver.-The Attorney General [now, Secretary, Department 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 [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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

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 husband is her qualifying relative under section 212(a)(9)(B)(v) of the Act.

The applicant’s husband states that over the past 10 years his father and mother passed away, and the applicant is the only person in his life who supports him emotionally, and is able to help him with his physical ailments due to her nursing background. Over the last 10 years he went from being a successful employee, to filing for bankruptcy because of taxes he owed. He now works as an independent contractor for a computer developer, earning \$5000 a month, and he is the sole breadwinner in their household. He believes he would be unable to support two households if the applicant returns to Brazil. His financial and emotional stress has compounded over the years, and the possibility of being separated from the applicant has caused him to suffer major depression, anxiety, insomnia, and to contemplate suicide. His work performance has declined, and he fears losing his job. He also suffers from stress-related physical ailments, including back and chest pain, and stomach problems. In addition, he states that, though the applicant was recently treated for breast cancer, he fears medical tests may show that she has cancer again, and he worries the applicant will be unable to receive adequate health care in Brazil. Moreover, he was born and raised in the United States and does not speak Portuguese. He does not believe he would be able to find work if he relocates to Brazil; and he is “terrified at the thought” of moving to Brazil, where he knows no one.

The applicant states in an affidavit that her husband’s father’s death in 2002, his mother’s health issues and death in 2010, and her own diagnosis and treatment for breast cancer in 2010, have caused her husband to suffer from depression and back problems. She gives her husband

emotional support, is a “stabilizing force in his life,” and takes care of his physical ailments. Her husband, who suffered from depression for years, has been on “an emotional downward spiral” since her waiver application was denied, and has sought therapy as a result.

The record contains two psychological evaluations prepared by the same therapist. In the evaluation dated October 6, 2011, the therapist diagnoses the applicant’s husband with recurrent and severe major depressive disorder with psychotic features, and generalized anxiety disorder. His anxiety disorder therapy plan includes individual therapy sessions and self-relaxation techniques. His depression therapy plan consists of learning adaptive self-coping skills, effective problem solving, increasing his support system, and antidepressant medication. According to the therapist, the applicant’s husband’s conditions were triggered by the threat of separation from his wife, with further aggravation resulting after the death of his mother. He “benefits greatly from the applicant’s presence and emotional support and her management of the household,” and therapy “would likely be much more fruitful” if the applicant and her husband remained united. The therapist states the applicant’s husband’s “mental health is likely to continue to deteriorate without the emotional and physical support” of the applicant, relocating to Brazil would “compound the trauma that he has already suffered as a result of the situation and recent death of his mother” and the applicant’s relocation to Brazil could lead to suicidal thoughts and ideations.

In June 1, 2011, the therapist diagnosed the applicant’s husband with generalized anxiety disorder and major depressive disorder. His anxiety “condition requires at least one year of treatment and therapy on an as needed basis,” and he was referred to a psychiatrist for a medication evaluation. According to the therapist, his symptoms began when the applicant was diagnosed with breast cancer. He was assessed for present suicidal thoughts and ideations and found not to be at risk of hurting himself or others. However, the therapist states the applicant’s husband could develop suicidal thoughts and ideations if the applicant returns to Brazil.

Medical records reflect the applicant’s husband is under treatment for sleep disturbance symptoms related to distress about the applicant’s possible removal from the United States. He has also been treated for back, shoulder and knee pain; physical therapy and massages from the applicant and occasional medication have helped his physical symptoms; and further treatment will occur on an “as needed” basis.

The record contains a 2010 letter from a homeowner stating the applicant and her husband have rented a room in her house since October 2010. Financial and employment evidence reflects the applicant’s husband has worked full-time as an independent contractor since May 2005; his employment is on-going, and he earns \$5000 a month. According to federal tax returns, he earned between \$50,000 and \$52,000 as a software developer between 2007 and 2010.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant’s husband would experience hardship that rises above the common results of removal or inadmissibility if the applicant remained in the United States, separated from the applicant. The applicant’s husband has a history of depression; he is emotionally dependent on the applicant; and he has been diagnosed with generalized anxiety and major depressive

disorder that could lead to suicidal thoughts and ideations, triggered by the possibility of separation from the applicant, and concerns for her physical and financial welfare in Brazil. The cumulative evidence establishes the applicant's husband will experience extreme hardship if he remains in the United States, separated from the applicant.

The evidence, considered in the aggregate, establishes the applicant's husband would also experience hardship beyond that normally experienced upon removal or inadmissibility if the applicant were denied admission, and he relocated to Brazil. The applicant's husband was born and raised in the United States, he has no family or cultural ties to Brazil, and he does not speak Portuguese. In addition, he would lose access to healthcare in the United States if he relocates to Brazil, and he has a specialized career that he also would lose. The cumulative hardship upon relocation to Brazil rises above that normally experienced upon relocation upon removal or inadmissibility.

The AAO finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). In evaluating whether section 212(a)(9)(B) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if s/he is excluded and/or deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The unfavorable factors in this matter are the applicant's accrual of unlawful presence in the United States between April 1998 and December 2003 and July 2004 and March 2009. The favorable factors are the hardship the applicant's husband would face if the applicant is denied admission into the United States, the applicant's good moral character, and the applicant's lack of a criminal record. The AAO finds that although the immigration violations committed by the applicant are serious in nature and cannot be condoned, taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

Upon review of the totality of the evidence, the AAO finds that the applicant has established extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. It has also been established that the applicant merits a favorable exercise of discretion. The applicant has therefore met her burden of proving eligibility for a waiver of her ground of

inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act. The Form I-601 appeal will therefore be sustained.

**ORDER:** The appeal is sustained.