



U.S. Citizenship
and Immigration
Services

[REDACTED]

HG

Date: DEC 19 2012

Office: PORTLAND, MAINE

FILE: [REDACTED]

IN RE: [REDACTED]

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

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.

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,

Perry Rhew
Chief, Administrative Appeals Office

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

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 United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant has a U.S. citizen spouse and seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated April 13, 2011, the field office director found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse as a result of her inadmissibility. The application was denied accordingly.

On appeal, counsel states that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility because he has health problems and would suffer upon relocating to Brazil.

Section 212(a)(9)(B) 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.

The record indicates that the applicant first entered the United States in 1999 on a nonimmigrant tourist visa and remained in the United States until February 2005. Therefore, the applicant accrued unlawful presence from when she entered the United States in 1999 until February 2005. On December 16, 2007, the applicant reentered the United States as a nonimmigrant tourist. We note that the field office director, based on the testimony of the applicant during her adjustment interview, incorrectly stated that the applicant's reentry date was June 15, 2008. On appeal, counsel asserts and airline records support that the applicant's date of reentry was December 16, 2007. However, the discrepancy over the applicant's reentry date is of no consequence to the field office director's finding of inadmissibility. In applying for adjustment of status, the applicant is seeking admission within ten years of her February 2005 departure from the United

States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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-I-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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998)(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 record of hardship includes: counsel’s brief, a letter from counsel submitted with the original waiver application, a statement from the applicant’s spouse, death certificates for the applicant’s spouse’s family members in Brazil, documentation regarding family members in the United States, financial documentation, and a psychological evaluation.

The applicant is claiming that her spouse will suffer extreme emotional and physical hardship as a result of separation and emotional, physical, and financial hardship as a result of relocation. The applicant’s spouse states that as a result of the applicant’s immigration situation he is suffering from anxiety, depression, insomnia, and panic attacks. He states that he has lost 20 pounds because he has no appetite and that he cannot concentrate at work. The record indicates that he is on a prescription medication for his symptoms and a licensed social worker has

diagnosed him with Major Depressive Disorder. The record indicates further that the applicant's spouse has a history of insomnia during stressful periods in his life.

In regards to relocation, the record indicates that the applicant's spouse has two adult sons living in the United States and two siblings, who he has little contact with, living in Brazil. He states that he cannot leave his two sons, one who serves in the Marines, and another who is a mechanic in Rhode Island. The record indicates that the applicant's spouse has lived in the United States since 1989, works as an electrician, and is a small business owner. The applicant's spouse states that he returned to Brazil for a brief period in 2007 to help his mother after the untimely death of his brother, but that he was not able to find work to support his mother's needs, so he then returned to the United States where he could work and send money to Brazil to support his mother. The applicant's spouse asserts that he and the applicant would not be able to find employment in Brazil because they are too old. The applicant's spouse states that he is an electrician, working for the restaurant chain, Naked Fish, and the applicant works in and manages a beauty salon owned by him.

We find that the applicant's spouse has not established that he would suffer extreme hardship as a result of the applicant's inadmissibility because he has failed to submit documentation to fully support the hardship claims made and he has not shown that the hardship he would face is beyond what would normally be expected upon removal of a spouse. The record includes documentation to show that the applicant's spouse is currently employed as an electrician and owns a cleaning business. The record does not include supporting documentation to show that he also owns a beauty salon in Massachusetts. The record fails to support the applicant's spouse's assertions regarding someone of his age and experience not being able to find employment in Brazil or the applicant, with her experience working in a beauty salon, not being able to find employment in Brazil. The country conditions report does not indicate that people with the work experience and skills of the applicant or her spouse would not be able to find employment in Brazil, even given their age. We recognize that the applicant's spouse has two adult sons living in the United States and has been living in the United States for over 20 years, but the applicant's spouse has also spent much of his life in Brazil. He was born in Brazil and lived there until he was 35 years old, he visits Brazil once a year, he has two siblings living in Brazil, and as evidenced by his ties to the Brazilian community in Massachusetts, he continues to identify with Brazilian culture.

In regards to the hardship claims made as a result of separation, we acknowledge the report from the social worker and recognize that the applicant's spouse is suffering hardship, but the applicant's spouse has failed to include evidence that his emotional hardship as a result of separation is beyond what others in his situation would experience.

The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions cannot be given great weight. *See Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) ("Information contained in an affidavit should not be disregarded simply because it appears to be hearsay. In administrative

proceedings, that fact merely affects the weight to be afforded [it]"). Going on record without supporting evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Thus, the AAO finds that the applicant has not established that her U.S. citizen spouse will suffer extreme hardship as a result of her inadmissibility.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.