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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office  
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**U.S. Citizenship  
and Immigration  
Services**



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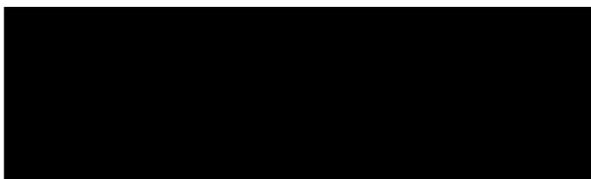
DATE: FEB 01 2012 Office: SANTA ANA, CA

FILE: 

IN RE: 

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.

Thank you,

A handwritten signature in cursive script, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Santa Ana, California and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a 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 admission within 10 years of his last departure. The applicant is the spouse of a U.S. citizen. He seeks a waiver under 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.

The Field Office Director (FOD) concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated July 29, 2009.

On appeal, counsel asserts that the FOD erred in concluding that the applicant has not established extreme hardship to his qualifying relative. Counsel contends that the FOD did not properly consider all of the relevant hardship factors. *Form I-290B, Notice of Appeal or Motion*, dated August 28, 2009.

The record includes, but is not limited to, the following evidence: counsel's briefs; statements from the applicant and his spouse; medical records and statements for the spouse; medical articles; country conditions information on Brazil; and employment documents for the applicant and his spouse. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(9)(B) states 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 reflects that the applicant entered the United States on December 7, 2000 with a B-1/B-2 nonimmigrant visa, which authorized him to remain in the United States for up to six

months, i.e., until June 6, 2001. The AAO finds that he accrued unlawful presence from June 7, 2001, until his departure in December 2005. As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of his 2005 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of the 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 or other family members 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).

In the present case, the record reflects that the applicant is married to a U.S. citizen. The applicant also claims two stepchildren who are U.S. citizens. The applicant's spouse meets the definition of a qualifying relative. The applicant's stepchildren are not qualifying relatives for purposes of the waiver sought and, therefore, any hardship they might experience as a result of the applicant's inadmissibility will be considered only to the extent it results in hardship to the applicant's spouse.

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 BIA 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, 631-32 (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, "[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., In re 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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel contends that the applicant's spouse suffers from chronic depression and became completely disabled and unable to function after her separation from her first husband in

1995. Counsel also contends that if the applicant's spouse is separated from the applicant, the likelihood that she would undergo a similar depressive episode is very high. Counsel further asserts that the applicant's spouse has also been diagnosed with Barrett's Esophagus and high blood pressure, and needs the applicant's support to sustain her well-being. Counsel also asserts that the spouse financially depends on the applicant's income as her hours have decreased in 2009.

The applicant has submitted an August 27, 2009 statement from his spouse, [REDACTED]. In her statement, [REDACTED] indicates that she was first diagnosed with chronic depression in the early 1990s and that she has been on antidepressants and antianxiety medications since then. She states that she had an episode of severe depression in 1995 when she separated from her first husband. [REDACTED] states that during that episode, she had suicidal thoughts, was unable to work, and was placed on disability. She further states that as a result, she was unable to care for her daughter and gave the custody of her daughter to her first husband. She states that she was in counseling more than two decades. [REDACTED] further states that the relationship between her physical and mental health is a sensitive balancing act, and that when she is psychologically well, she is also essentially physically healthy. She states that she is fearful that separation from the applicant would trigger another episode of severe depression, which could result in the return of suicidal thoughts and feelings of complete worthlessness. [REDACTED] also asserts that the applicant is the main source of her emotional support in dealing with life's stresses. She states that her father left her family when she was four years old. Her mother, on the other hand, has been diagnosed with bipolar disorder and does not provide emotional support. She further states that since she has found out about the applicant's inadmissibility, her depression has worsened and she has been placed back on medications to control her symptoms.

In his statements, the applicant indicates that he is the family breadwinner and that his spouse will have no one to care for her in his absence. He also states that he works 60 hours a week in order to be able to "get the insurance benefit [sic]" he needs to care for his spouse. The applicant has submitted letters from his and his spouse's employers indicating the number of hours they work. According to these letters, the applicant works an average of 35 hours per week at Naples Restaurant and he is also employed on a part-time basis with [REDACTED] where he works an average of eight hours a week. The applicant's spouse, on the other hand, is reported as working an average of 10 hours a week at Naples Restaurant. The pay stubs submitted indicate a total of \$24,489.43 gross earnings for the applicant and \$6,022.03 for his wife as of August 2009. In addition, [REDACTED] states that her work hours have been cut from being a full-time employee down to approximately two to three eight-hour shifts per two-week pay period. She states that her paycheck ranges from \$100 to \$185, plus tips. She further indicates that she lost her full medical benefits in 2008 and now pays into a part-time health insurance plan. She also states that a psoriasis medication that used to cost her \$50 out-of-pocket now costs \$390 under her part-time health plan. The applicant, therefore, contends that without his financial support, his spouse will not be able to support herself. The record also contains documents showing various medical bills for the applicant's spouse and the costs covered by medical insurance.

In support of his wife's medical condition, the applicant has submitted copies of her medical records, which reflect on-going treatment for depression since 1991, including pharmacological interventions and counseling. Medical records also reflect that [REDACTED] has a history of gastroesophageal reflux disease, Barrett's Esophagus, hypertension, psoriasis, liver disease, hypercholesterolemia, and rhinitis for which she has gone through many diagnostic tests and currently is taking medications. The record also contains copies of disability payments that [REDACTED] received in 1995.

The applicant has submitted a statement from [REDACTED] dated August 11, 2009. In his statement, [REDACTED] states that [REDACTED]'s mental health has worsened, and that she now has symptoms of depression and that she is being put back on an antidepressant. [REDACTED] further states that resolving her current stressful events should help her depression greatly. Also included in the record are progress notes of [REDACTED]'s visits to [REDACTED] in 2007, 2008, and 2009. According to [REDACTED]'s most recent notes, dated August 11, 2009, [REDACTED] symptoms include but are not limited to, an increase in the frequency of mood swings, anxiousness, poor attention span, frequent crying, a periodic loss of energy, social withdrawal, a loss of interest in usual activities, nightmares, and insomnia. In his notes, [REDACTED] describes [REDACTED] mood and affect as "anxious, apprehensive, [and] tense."

Having reviewed the preceding evidence, the AAO finds it to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and she remains in the United States. In reaching this conclusion, we have noted that the applicant's wife has a significant medical history and difficulty coping with separation. Evidence in the record indicates that stressful situations negatively contribute to [REDACTED]'s mental and physical well-being and should be avoided by her. During a period of severe depression in 1995, the applicant's spouse was unable to work and was on disability. The record allows us to find that the applicant's removal would push her into a mental state similar to that she experienced in 1995; and therefore, it is likely that she would be unable to support herself in the applicant's absence and significant financial hardship would result. The AAO finds that the applicant is the primary source of emotional support for his wife and that his absence would cause a great deal of stress to his spouse. Accordingly, the AAO concludes that the applicant's spouse would experience extreme hardship on separation.

The AAO also finds the record to establish that the applicant's spouse would experience extreme hardship if she relocates to Brazil. In reaching this conclusion, we have noted, as discussed above, that the applicant's spouse has a significant medical history for which she may not receive adequate care in Brazil. Through medical records, letters from her doctor, and his spouse's own statements, the applicant has established that his wife has significant medical conditions for which she has been receiving ongoing treatments. She has been taking several medications to control her depression and other medical conditions. The record also establishes that her depression and other medical conditions are negatively affected by stressful situations. As indicated by [REDACTED] stressful situations are among factors that trigger major depressive episodes and therefore, should be avoided by the applicant's wife.

The applicant also submitted various online articles on healthcare in other countries, including Brazil. In the exhibit index counsel provided on appeal, he indicates that the articles on Brazil have been submitted to establish “the primitive treatment, social stigma, and lack of knowledge on how to treat depression in Brazil.” According to the article written by [REDACTED] depression and other mental disorders “receive insufficient and wrong” resources in Brazil, and treatment can be based on highly-ideologically based policies that lack scientific evidence to support their efficacy. *Current Subjects on Depression*, 31 Sup. 1 [REDACTED] (May 2009). Having considered the specific medical conditions documented in the record and the disruptions and difficulties that normally result from relocation in the aggregate, we find the record to demonstrate that the applicant’s spouse would suffer extreme hardship if she joined the applicant in Brazil.

In that the applicant has established that the bar to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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 . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion 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 he is excluded and 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*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “[B]alance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant’s failure to comply with the conditions of his nonimmigrant visa; his unlawful presence in the United States for which he now seeks a waiver; and his unauthorized employment while he was on B-2 nonimmigrant status and during

his unlawful presence. The mitigating factors include the applicant's U.S. citizen spouse; the extreme hardship to his spouse if the waiver application is denied; the absence of a criminal record; and his professionalism and dedication in a work setting.

The AAO finds the immigration violations committed by the applicant to be serious in nature and does not condone them. Nevertheless, we conclude that taken together, the mitigating factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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. *See* section 291 of the Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal will be sustained.