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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**

HG

[REDACTED]

Date: FEB 10 2012

Office: MIAMI, FL

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted, the appeal will be sustained, and the underlying waiver application will be granted.

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)(i)(II) of 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 is married to a U.S. citizen and 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 his wife in the United States.

The acting district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Acting District Director*, dated March 6, 2006. The AAO dismissed a subsequent appeal, also concluding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Administrative Appeals Office*, dated March 20, 2008.

Counsel has filed a Notice of Appeal or Motion (Form I-290B) and a brief contending that the applicant established extreme hardship to the applicant's husband, particularly considering country conditions in Brazil. *Notice of Appeal or Motion (Form I-290B)*, dated April 16, 2008; *Brief in Support of Motion to Reconsider Waiver Denial*, dated April 16, 2008. Counsel has submitted additional evidence, including country conditions reports, sworn statements, financial documents, and medical documentation in support of the motion.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

In this case, counsel contends the decisions by USCIS were based on an incorrect application of law and asserts that the applicant established the requisite hardship. In support of this contention, counsel cites numerous decisions from the circuit courts of appeals as well as from the Board of Immigration Appeals. Therefore, the applicant's submission meets the requirements of a motion to reconsider. Accordingly, the motion to reconsider is granted.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, indicating they were married on August 26, 2002; two letters and a sworn statement from statements from the applicant; a letter from parents; a letter from physician and documentation from a pharmacist; letters of support; copies of tax records, pay stubs,

and other financial documents; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Brazil and other background materials; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

(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.

In this case, the record shows, and the applicant concedes, that she entered the United States on April 17, 1998, using a visitor's visa with authorization to remain in the United States until July 16, 1998. The applicant concedes that she did not timely depart the United States and remained until her departure on September 24, 2000. *Sworn Statement by Ana Maria Egna*, dated April 16, 2008; *Letter from Ana Maria Egna*, dated October 28, 2003. The applicant accrued unlawful presence from July 17, 1998, until September 24, 2000. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more. The record further shows that the applicant reentered the United States on May 2, 2001, using a visitor's visa and continues to reside in the United States.

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.

In this case, the applicant's husband, [REDACTED] states that he will suffer extreme financial hardship if his wife returns to Brazil. He states that he lost his job and is now working two part-time jobs. [REDACTED] states that he will be unable to support himself and the couple's son without his wife's income. In addition, [REDACTED] states that he has suffered from clinical depression for most of his life. He states he was always alone, did not feel comfortable enough to go out on his own, always felt helpless, and hated his life. [REDACTED] contends that since he met his wife, he no longer suffers. He states that he cannot imagine living without his wife and it would be very straining on his mental state to the point that he would probably lose his jobs. Furthermore, [REDACTED] contends that he cannot move to Brazil because of the high crime rate throughout the country. He states that he was born and raised in the United States and that if he moved to Brazil, he would be apart from his elderly parents whom he takes care of, takes to buy groceries, and takes to doctor's appointments. In addition, he contends that he is Jewish and that he is concerned about neo-Nazi groups in Brazil. [REDACTED] also states that he fears he would be unable to work in Brazil considering he does not speak Portuguese. *Sworn Statement by [REDACTED]*, dated April 16, 2008; *Letters by [REDACTED]*, dated November 14, 2003, and undated.

A letter from [REDACTED] physician states that [REDACTED] has been his patient since October of 1995. According to the physician [REDACTED] has been suffering from major depression and anxiety since 2003. The physician states that [REDACTED] has been on medications including Xanax, Paxil, and over-the-counter medications, but has had to stop medications due to side effects. The physician states that [REDACTED] is still anxious and depressed, particularly because of his wife's immigration status. According to the physician [REDACTED] will suffer another major depression should his wife not be granted immigration status. *Letter from [REDACTED]*, undated. A printout from a pharmacist of Mr. Egn's prescriptions from March of 2005 to April of 2008 show a total of eight different prescription medications.

A letter from [REDACTED]'s parents states that their son suffers from depression and anxiety and that he [REDACTED] medications. According to [REDACTED] parents, the applicant helps their son in all matters and [REDACTED] has been doing very well, but is horrified at the idea of being separated from his family. In addition, [REDACTED]'s parents contend that they need their son and daughter-in-law to stay close by because they need their help. The letter states that [REDACTED]'s father is seventy-eight years old and suffers from heart conditions, diabetes, asthma, and spinal stenosis. The letter states that [REDACTED] is their only son who lives close by, that he helps them, and that if he moved to Brazil, they would be unable to afford the cost of travel to visit him. *Letter from [REDACTED]* dated April 16, 2008.

After a careful review of the record, the AAO finds that the applicant's husband, [REDACTED] will suffer extreme hardship if the applicant's waiver application were denied. The letter from [REDACTED] physician and the printout from the pharmacist documenting [REDACTED] medications corroborate [REDACTED] claim that he has suffered from depression and anxiety for many years and has taken prescription medications to address his mental health issues. [REDACTED] contention that his depression and anxiety will increase to the point that he would probably lose his jobs is corroborated by the letter from his physician which predicts that [REDACTED] will suffer another major depression if his wife departs the United States. *Letter from [REDACTED]*. In addition, copies of pay stubs in the record

corroborate [REDACTED] financial hardship claim, showing that he is currently working two part-time jobs earning \$6.79 and \$9.77 per hour, earning a total of approximately \$467 every two weeks, and that the applicant earns the majority of their income, earning \$1,154 every two weeks. Considering the evidence in the aggregate, the AAO finds that if [REDACTED] decides to stay in the United States without his wife, the effect of separation from the applicant goes above and beyond the experience that is typical to individuals separated as a result of inadmissibility or exclusion and rises to the level of extreme hardship.

Moreover, moving to Brazil to avoid separation would be an extreme hardship for [REDACTED]. As stated above, the record shows that [REDACTED] has suffered from depression and anxiety for many years and has been a patient of the same physician since 1995. The AAO recognizes that relocating to Brazil would disrupt the continuity of [REDACTED] health care. Furthermore, the AAO acknowledges [REDACTED] contentions that he was born and raised in the United States, does not speak Portuguese, and has elderly parents who live close by. Regarding [REDACTED] concerns about safety in Brazil, the AAO acknowledges that the crime rate remains high in Brazil. *U.S. Department of State, Country Specific Information, Brazil*, dated December 7, 2011 (stating that Brazil's murder rate is more than four times higher than in the United States and that the rates for other crimes are similarly high). In addition, as [REDACTED] contends, there are reports that "skinheads, neo-Nazis, and white supremacists . . . perpetrat[e] harassment and violence toward Jews and other minority groups." *U.S. Department of State, Country Reports on Human Rights Practices, Brazil*, dated April 8, 2011. Considering all of these unique factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if he relocated to Brazil to be with his wife is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the applicant's unlawful presence in the United States. The favorable and mitigating factors in the present case include: significant family ties in the United States, including her U.S. citizen husband; the extreme hardship to the applicant's husband and extended family if she were refused admission; and the fact that the applicant has not had any arrests or convictions in the United States.

The AAO finds that, although the applicant's immigration violation is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The motion will be granted. The March 20, 2008 decision of the Administrative Appeals Office is withdrawn and the appeal is sustained.