U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office
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Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

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[redacted]

DATE: FEB 2 1 2012 Office: PHILADELPHIA, PA 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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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, Philadelphia, Pennsylvania and the matter is now before the Administrative Appeals Office (AAO) on appeal.[1] The appeal will be dismissed.

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. 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. *See Field Office Director's Decision,* dated June 3, 2009.

On appeal, the applicant's former counsel ("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. *See Form I-290B, Notice of Appeal or Motion*, dated June 29, 2009.

The record includes, but is not limited to, the following evidence: counsel's brief; statements from the applicant and his spouse; medical records for the applicant's spouse; country conditions information on Brazil; medical articles; business and financial documentation, including tax returns, W-2 Wage and Tax Statements, and earnings statements; and statements of support from family and friends. 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-
> >
> > . . . .

[1] On June 3, 2009, the Field Office Director denied the applicant's waiver application after finding that the applicant had failed to establish that a qualifying relative would suffer extreme hardship as a result of inadmissibility. On July 28, 2009, the Field Office Director dismissed the Form I-290B, Notice of Appeal or Motion, based on a determination that it had been improperly filed. On September 16, 2009, the Field Office Director acknowledged the proper filing of the Form I-290B and reopened the matter, treating it as an appeal and forwarding it to the AAO.

> (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 February 16, 2000 with a B-1/B-2 nonimmigrant visa, which authorized him to remain in the United States until August 15, 2000. On December 23, 2001, the applicant departed the United States, thereby triggering the unlawful presence provisions of section 212(a)(9)(B)(i)(II) of the Act. He reentered the United States on March 23, 2002 as a B-2 nonimmigrant. Based on the applicant's history, the AAO finds that he accrued unlawful presence from August 16, 2000, the day after his authorized period of stay ended, until his departure on December 23, 2001. As the applicant accrued unlawful presence in excess of one year and is seeking admission without having remained outside the United States for ten years following his 2001 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

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 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 that 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 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, 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 has been diagnosed with chronic respiratory problems and that medical treatment in Brazil is much inferior to that in the United States. Counsel further contends that if the applicant's spouse relocates, she would experience financial hardship because the applicant would have to sell his business in the United States and they would not be able to find suitable jobs in Brazil. He also contends that Brazil does not offer a stable living situation for the applicant and his spouse, and that they would experience extreme hardship as a result of the country's economic situation, substandard housing, and high crime rates. Counsel further states that relocation would separate the applicant's spouse from her sons and other family members.

The applicant has submitted June 24, 2009 and October 10, 2008 statements from his spouse, [redacted] In her statements, [redacted] asserts that moving to Brazil is not an option for her because she does not speak Portuguese or Spanish; would not be able to find a job there; and would not be able to get equivalent medical care. She also states that she cannot relocate to Brazil because her sons, grandchildren and sister all depend on her.

As evidence of his wife's medical condition, the applicant has submitted copies of hospital records, dated January 10, 2008 and June 4, 2008. According to the medical notes, the applicant's spouse has been diagnosed with Chronic Obstructive Pulmonary Disease, Obstructive Chronic Bronchitis and Viral Hepatitis and is taking medication for these conditions. The record also contains several diagnostic reports, copies of medical prescriptions written for the applicant in 2008 and 2009, and information on chronic bronchitis.

The applicant has also submitted country conditions information on Brazil, including a country profile published by the United Nations Office on Drugs and Crime; a May 18, 2009 update of the section on Brazil from *The World FactBook*, published by the Central Intelligence Agency; and online articles from *Brazzil Magazine* and *Brazileconomy.blogspot*. The materials report on Brazil's national economy and unemployment, and the levels of crime and violence in the country.

Having reviewed the preceding evidence, the AAO finds the applicant to have established that his spouse would experience extreme hardship if she relocated with him to Brazil. While the record does not demonstrate that the Brazilian healthcare system would be unable to treat the applicant's spouse's medical conditions, we take note of the added hardship of moving to a new country and entering an unfamiliar healthcare system with chronic medical problems. We also acknowledge that the applicant's spouse's unfamiliarity with the Portuguese language would have a significant, negative impact on her ability to obtain employment or adapt to a new life in Brazil, and that all of her family, other than the applicant, reside in the United States. Having considered these specific hardship factors and the hardships that normally result from relocation to another country in the

aggregate, the AAO concludes that the applicant's spouse would suffer extreme hardship if she moved to Brazil with the applicant.

In support of the applicant's claim that his spouse would experience extreme hardship if the waiver application is denied and she remains in the United States, counsel asserts that in the applicant's absence, his spouse would be defenseless against emphysema, bronchitis and asthma, and that she needs the applicant's help to improve her delicate and dangerous chronic health conditions. Counsel also contends that the applicant would be forced to sell his company if he is not granted a waiver and that, in Brazil, he would not be able to find suitable employment. Counsel further asserts that the applicant's spouse would be required to financially assist the applicant in Brazil and that her income is not sufficient to maintain two households.

In her statements, [redacted] asserts that separation would cause her significant hardship. She states that without the applicant, she would be depressed and vulnerable, not only emotionally and mentally, but also physically. She also states that the applicant is the main breadwinner for their family and that his financial contributions are crucial to its well-being and stability. [redacted] maintains that without his income, she would not be able to support herself, keep their home, and also financially help her sons, grandchildren and sister when they need assistance. The applicant, she asserts, takes care of all of their bills and pays half of the monthly rent.

While the AAO acknowledges the preceding claims, we do not find the record to support them. As previously discussed, the record establishes that the applicant's spouse suffers from chronic respiratory problems. However, it fails to indicate that she is any way dependent on the applicant as a result of these problems. No evidence in the record establishes that the applicant's spouse's health limits her daily activities or that she requires the applicant's assistance to meet her healthcare needs. The record also lacks documentary evidence that establishes the nature or severity of the emotional hardship that the applicant's spouse would experience as a result of her separation from the applicant.

Included in the record is a 2009 tax return for the applicant's spouse, submitted in support of a new Form I-485 filed by the applicant on September 1, 2010. The return indicates that the applicant's spouse's annual income is $21,242. The record also contains a copy of a residential lease for the applicant and his spouse, demonstrating that they pay $325 per month in rent and copies of a May 25, 2008 auto insurance bill, an August 27, 2008 telephone bill and the title for the automobile owned by [redacted] showing no lien holder. This financial evidence, however, is too limited to establish the applicant's spouse's financial situation in his absence. The record also fails to document that the applicant's spouse is periodically providing financial support to her other family members. Further, the country conditions information the applicant has submitted on Brazil's national economy and unemployment does not demonstrate that the applicant would be unable to find gainful employment in Brazil as it fails to indicate how Brazil's overall economic situation and unemployment levels would affect him. Therefore, the record does not demonstrate either that the applicant would be financially dependent on his spouse if he were to be returned to Brazil or that he would be unable to financially assist her from outside the United States.

Based on the evidence of record, the AAO does not find the applicant to have established that his spouse would experience extreme hardship if the waiver application is denied and she remains in the United States without him.

The AAO can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Because the applicant has not met that burden, the appeal will be dismissed.

ORDER: The appeal will be dismissed.