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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

Date: **APR 12 2013** Office: LIMA, PERU

IN RE: Applicant:

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 "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native of Brazil and a dual citizen of Brazil and Italy 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 his last departure from the United States. The record indicates that the applicant is married to a U.S. citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 in the United States with his spouse.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 8, 2012.

On appeal, the applicant, through counsel, contends that the Field Office Director's decision denying the applicant's waiver application "is based upon errors of law and fact." *Counsel's appeal brief, attached to Form I-290B, Notice of Appeal or Motion*, dated June 6, 2012. Additionally, the applicant's wife will suffer extreme hardship if his waiver application is denied. *Id.* Counsel also submits new evidence of hardship on appeal.

The record includes, but is not limited to, counsel's briefs; statements from the applicant, his wife, and family and friends; medical and psychological documents for the applicant's wife and his in-laws; financial documents; household and utility bills; employment documents for the applicant and his wife; school records for the applicant's wife; photographs; country-conditions documents on Brazil; criminal documents concerning the applicant<sup>1</sup>; and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9) 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

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<sup>1</sup> The AAO notes that on February 1, 2010, the applicant was charged with breaking and entering and destruction of property; however, the charges were dismissed on June 15, 2010.

within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

.....

- (v) Waiver.-The [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.

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 wife 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 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 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. 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 v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9<sup>th</sup> 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 the present application, the record indicates that on November 12, 2008, the applicant entered the United States under the Visa Waiver Program, by presenting his Italian passport. He had authorization to remain in the United States for 90 days, but he failed to depart the United States when his authorization expired. On April 28, 2010, the Field Office Director, Immigration and Customs Enforcement, Boston, Massachusetts, ordered the applicant removed from the United States. On May 4, 2010, the applicant filed an application to adjust status; the application was denied August 19, 2010. He was removed on October 5, 2010. The applicant accrued unlawful presence between February 11, 2009, and May 4, 2010. The applicant is, therefore, 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 more than one year, and he seeks admission within 10 years of his departure from the United States. The applicant does not contest his inadmissibility.

Describing his wife’s hardship should she remain in Brazil with him, in his statement dated May 23, 2012, the applicant states that his wife is afraid to leave the apartment and has panic attacks. In her affidavit dated February 4, 2012, the applicant’s wife states she has panic attacks almost daily and sometimes she does not even get out of bed because she is depressed and feels hopeless and alone. Medical documentation in the record from Brazil establishes that the applicant’s wife is suffering panic

attacks, and she has been prescribed medication. The applicant states his wife lives in “constant depression” and she misses her parents. In her affidavit dated May 23, 2012, the applicant’s wife states she suffers from major depression, anxiety, insomnia, panic attacks, and suicidal thoughts, but she cannot afford health insurance, medication, or treatment there. The applicant’s wife states her “suicidal thoughts are becoming more frequent.” She claims healthcare in Brazil is inadequate and she fears for her health. In a psychological evaluation dated July 26, 2011, [REDACTED] states that although the applicant’s wife joined the applicant in Brazil, her depression and anxiety symptoms have persisted for over a year. She claims that the applicant’s wife’s symptoms are related to her being unable to work or attend college and her separation from her family in the United States. [REDACTED] also reports that the applicant’s wife suffers from serious medical conditions, including recurrent urinary tract infections, but she cannot afford treatment.

The applicant states his father-in-law suffers from health problems, but his mother-in-law’s recent diagnosis of breast cancer is the “greatest worry” for their family. Medical documentation in the record establishes that the applicant’s father-in-law suffers from aortic valve disease and depression, and his mother-in-law has breast cancer. The applicant’s wife states she has always cared for her parents, and now that her mother is undergoing treatment for breast cancer, it is difficult for her to be separated from them. She states her father suffers from two heart conditions, and she used to make his doctor’s appointments and call in his prescriptions. She worries that while taking care of her mother and their family business, her father will not take care of himself. The applicant’s in-laws state the applicant’s mother-in-law will undergo treatment for her breast cancer, which includes chemotherapy, surgery, and radiation, and they need their daughter to help them. In their letter dated October 27, 2011, social worker [REDACTED] and [REDACTED] state the applicant’s mother-in-law was diagnosed with breast cancer on October 14, 2011, she will likely undergo treatment for about a year, and it is important for her to have as much family support as possible. Additionally, the applicant’s wife states her mother was hospitalized for blood clots in her legs and she cannot walk. Documentation in the record establishes that the applicant’s mother-in-law was diagnosed with deep-vein thrombosis. In her letter dated September 26, 2012, licensed social worker [REDACTED] states the applicant’s mother-in-law cannot work in her cleaning business because of her medical issues and needs the applicant’s wife with her for practical and emotional reasons. The applicant’s wife states she needs to be in the United States to help her family, especially her parents with their medical issues. [REDACTED] indicates that the applicant’s wife has “played a key role” in helping to maintain her mother’s health. In his letter dated January 4, 2013, [REDACTED] states that the applicant’s father-in-law would suffer because of the separation from his daughter, “exacerbating both his cardiac status and his psychiatric status.” [REDACTED] indicates that the applicant’s father-in-law would benefit from having his daughter return to the United States.

The applicant’s wife states they are suffering financially in Brazil because they have been unable to find employment and depend on assistance from the applicant’s parents. [REDACTED] reports that the applicant’s wife worked teaching English for three months, but it was only a temporary position. The applicant’s wife states she cannot afford to travel to the United States to visit her family or repay her debts. Additionally, she has “lost all that [she] had.” She claims that her debts include \$14,000 in student loans, \$6,000 for her repossessed car, and \$1,515 to her college. Documentation in the record corroborates the applicant’s wife’s claims of financial hardship. The applicant’s wife states in the United

States, she was a “top” student at her college; she would like to return to school, but the educational system in Brazil is not as good as in the United States. Additionally, the applicant’s wife states she worked part-time in her family’s business and since she has been in Brazil, the business has suffered. In his affidavit dated December 20, 2012, the applicant’s father-in-law states since his daughter relocated to Brazil, they have lost clients which has affected their income. The applicant’s in-laws state they relied on their daughter to help them with their business because of her English language skills, and she still helps them from Brazil by answering e-mails from clients. The applicant’s father-in-law states his daughter is his “right-arm,” he consults with her before making any decision, and she was the “one who made [their] business rise.” Further, the applicant’s wife states Brazil is dangerous. [REDACTED] reports that according to the applicant’s wife, she feels unsafe in Brazil. Moreover, counsel states the applicant’s wife has resided in the United States since she was twelve years old, all of her family lives within minutes of each other, and they are “extremely close.” The applicant’s wife states she has no ties to Brazil. However, [REDACTED] reports that according to the applicant’s wife, she has two half-sisters residing in Brazil.

Based on the record as a whole, including the applicant’s wife’s safety concerns in Brazil; her minimal ties to Brazil; her serious medical and mental health issues and disruption of her treatment; her lack of health insurance in Brazil; her separation from her family in the United States, including her mother who has breast cancer; her parents’ reliance on her for their business and medical issues; her limited employment and educational prospects; and financial issues, the AAO finds that the applicant’s wife is suffering extreme hardship in Brazil.

Concerning the hardship that the applicant’s wife would experience by returning to the United States without the applicant, she states her depression, anxiety, insomnia, and panic attacks will continue if she is separated from him. She claims that during the applicant’s six-month detention, she was suicidal and having panic attacks; her hair fell out, and she lost weight. Additionally, she dropped out of college because of the applicant’s immigration situation, her health conditions, and inability to concentrate. [REDACTED] diagnoses the applicant’s wife with major depression and acute anxiety with panic attacks. The applicant’s wife claims that her mental-health conditions will continue if the applicant is in the United States with her, but the applicant would be available to support her. Additionally, she states her family needs her support while her mother is undergoing cancer treatment, and she needs the applicant’s support to give her “strength through this tough time.” She states that during a summer 2011 visit, it was a “tremendous relief” to be with her family but she missed the applicant. Additionally, during another visit to the United States in July 2012, she considered jumping out of a car while speeding on the highway. She claims that if the applicant had been with her, he would have reassured her and helped her cope with her suicidal thought. [REDACTED] states the applicant’s wife worries about the applicant in Brazil because he suffers from asthma, bronchitis, and allergies. The applicant’s wife states she will also worry about the applicant living in Brazil because of the security situation. Additionally, she states she could not afford to travel to Brazil more than once or twice a year, because she will only earn about \$400 a week working for her family’s business.

The AAO finds that when the applicant’s spouse’s hardships are considered in the aggregate, specifically her severe mental health condition, her financial issues, and her concern for the applicant’s welfare in

Brazil, the record establishes that the applicant's wife would face extreme hardship if she remained in the United States in his absence. Accordingly, the applicant has established extreme hardship to a qualifying relative under section 212(a)(9)(B)(v) of the Act.

The AAO additionally 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(h)(1)(B) 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-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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 depart the United States when his authorization expired, unlawful presence, unauthorized employment, and removal from the United States. The favorable and mitigating factors are the applicant's U.S. citizen wife, the extreme hardship to his wife if he were refused admission, and his good moral character as described in several letters of support.

The AAO finds that, although the immigration violation committed by the applicant 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.

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. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained. The waiver application is approved.