



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: MAR 08 2013

OFFICE: LIMA, PERU

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)

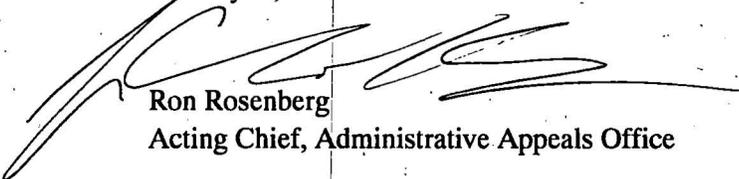
ON BEHALF OF APPLICANT:
[REDACTED]

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 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,


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 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 again seeking admission within 10 years of the date of the applicant's departure. The applicant is the son of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to return to the United States to live with his U.S. citizen father.

In a decision dated September 6, 2012 denying the Form I-601, Application for Waiver of Grounds of Inadmissibility, the Field Office Director concluded that the applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act and had failed to establish that the bar to admission would impose extreme hardship on his U.S. citizen father, the qualifying relative. See *Field Office Director's Decision*, dated September 6, 2012.

On appeal, counsel submits hardship declarations from the applicant's father and the applicant, medical records for the applicant's father and the applicant, business documents, and articles and excerpts from the Internet regarding country conditions in Brazil, deep vein thrombosis and health care in the United States. The record also includes, but is not limited to, prior hardship statements from the applicant's father and the applicant, a support letter from the applicant's girlfriend and medical documents.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The Field Office Director determined that the applicant was inadmissible under section 212(a)(9) of the Act, which provides, in pertinent part that:

(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.

...

- (v) Waiver.-The [Secretary of Homeland Security (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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

U.S. Citizenship and Immigration Services (USCIS) records show that the applicant was admitted to the United States on July 26, 2001 as a nonimmigrant visitor with authorization to remain until January 25, 2002. The applicant remained in the United States past that date until his departure in March 2012. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, and again seeking admission within 10 years of the date of the applicant's departure. Inadmissibility is not contested on appeal. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. citizen father.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 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. 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.

On appeal, the applicant’s father states that he will suffer extreme emotional, medical and financial hardship upon separation from the applicant. The record, in the aggregate, does not establish that the applicant’s father will suffer extreme hardship upon separation from the applicant.

Regarding emotional and medical hardship, the applicant’s father states that he is 69 years old and suffering from diabetes and high blood pressure. Due to his separation from the applicant, the applicant’s father claims that he is suffering from stress, which is causing his medical conditions to worsen. The applicant’s father states that recent medical test results show that he may also be suffering from prostate cancer and may need to undergo chemotherapy. Given his age and deteriorating health, the applicant’s father claims that he will need the emotional support of the applicant as he ages and his health worsens. The records include pharmacy refill slips that

establish that the applicant's father has taken prescription medication for diabetes and high blood pressure in the past. However, the record does not contain a letter from the applicant's father's doctor or other evidence discussing his medical conditions, his prognosis and required medical treatment. The record also does not contain supporting evidence that the applicant's father is suffering from stress since separation from the applicant and the negative impact of stress on his diabetes and high blood pressure. The record includes documentation that the applicant's father underwent a prostate biopsy in September 2012, the results of which were "suspicious but not confirmatory prostate cancer," and that he was scheduled for a second biopsy in December 2012. Counsel has not supplemented the record on appeal with any evidence of the results of the second biopsy or evidence that the applicant's father has no other family members capable of providing him with emotional support in the event that his health has worsened.

The applicant's father is also worried because the applicant has suffered from deep vein thrombosis for several years and is receiving lifelong treatment. The applicant's father states that the separation from the applicant and the knowledge that the applicant is living in Brazil with unreliable and inadequate medical services is causing him emotional distress exacerbating his diabetes and high blood pressure. The record contains extensive medical documentation establishing that the applicant suffers from deep vein thrombosis in his lower extremities requiring regular medical follow-up and prescription medication. However, the record does not contain supporting documentation establishing that the applicant's father is suffering from any resultant emotional distress negatively impacting his diabetes and high blood pressure.

Regarding emotional and financial hardship, the applicant's father states that given his age and his health, he would like to retire soon and let the applicant continue to manage his business with his business partner. The applicant's father claims that without the applicant's continued help, he is unable to manage his adult residential facility business since his current job requires him to travel. The applicant's father explains that his business partner is unable to manage the facility without the assistance of the applicant. The applicant's father claims that he will be forced to close the facility if separation continues and this will cause his employees to lose their jobs and the disabled residents to lose their homes. The record contains documentation that the applicant's father co-owns an adult residential facility, but does not establish that the applicant's father is employed elsewhere or travels for this job. The record does not establish that the applicant's son had managed the facility in Downey, California from his residence more than 350 miles away in Santa Clara, California where he had resided for the past four years prior to leaving the United States. *Form G-325A, Biographic Information for the Applicant*, signed and dated April 11, 2012. The medical records do not explain the impact of the applicant's father's health conditions on his ability to work on a full-time basis. The record also does not contain tax or financial documents showing total income and total expenses for the family showing financial hardship upon separation. In addition, the record contains no evidence of the applicant's father's inability to rely on other family members or employees for any needed support with his business in the applicant's absence.

The record lacks sufficient evidence demonstrating that the emotional, medical, financial or other impacts of separation on the applicant's father are in the aggregate above and beyond the

hardships normally experienced upon a family member's inadmissibility, such that the applicant's father would experience extreme hardship if the waiver application is denied and he remains separated from the applicant.

The record also does not establish that the applicant's father will suffer extreme hardship upon relocation to his native Brazil. The applicant's father has lived in the United States since 1994 when he left Brazil, owns two homes in the United States and is 69 years old. While the record shows that the applicant's father has substantial ties to the United States, the record also shows that the applicant's father is a native of Brazil and his parents and wife reside in Brazil. *Form G-325A, Biographic Information for the Applicant's Father*, signed and dated May 25, 2012. The applicant's father is concerned about relocating to Rio de Janeiro, Brazil because of the high level of crime and he believes that he will be targeted as he is elderly and vulnerable to criminals. The record includes documentation of country conditions in Brazil showing greater criminal activity in the urban cities of Brazil but does not establish that the applicant's father will be targeted because of his age.

Regarding medical hardship upon relocation, the applicant's father is concerned about his deteriorating health and being able to access comparable health care in Brazil. As discussed above, the record does not include sufficient documentation of the applicant's father's diabetes, high blood pressure or emotional distress and the type of medical care, if any, he may require. The record includes documentation on country conditions in Brazil which states that medical care comparable to U.S. standards is available in major cities, including Rio de Janeiro where the applicant and his mother reside.

Regarding financial hardship upon relocation, the applicant's father is concerned about selling his two homes in the United States in a depressed economic climate. The record does not include supporting documentation of this claim of financial hardship. As discussed above, the record contains no supporting documentation establishing the family's current financial condition.

While emotional, medical and financial difficulties are common results of inadmissibility, the evidence in this case does not establish that the applicant's father would suffer extreme hardship in the event of relocation to his native Brazil.

The applicant has failed to establish extreme hardship to his U.S. citizen parent, as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for a 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. 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.