



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE **MAR 22 2013** OFFICE: LIMA

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:

SELF-REPRESENTED

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 Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant is a beneficiary of an approved Petition for Alien Relative, as the spouse of a U.S. citizen, who seeks a waiver of inadmissibility in order to reside in the United States with his spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative. The Field Officer Director denied the application accordingly. *See Decision of the Field Office Director*, dated April 4, 2012.

On appeal, the applicant asserts that his wife and daughters are having a difficult time continuing with their lives without him. In support of the waiver application and appeal, the applicant submitted a letter from his spouse and himself. The entire record was reviewed and considered in rendering a decision on the appeal.

It is noted that the record contains evidence concerning the applicant's prior criminal contacts in the United States. The record indicates that the applicant was arrested in Georgia for driving under the influence of alcohol. The applicant's case was nolle prossed on February 5, 2009. The record also indicates that the applicant was arrested in Georgia for a misdemeanor hit and run on April 7, 2001. The record does not contain a disposition for this matter and the applicant asserts that he does not have any criminal convictions. A misdemeanor hit and run with no prior convictions, under section 40-6-270 of the Georgia code, carries a maximum penalty of one thousand dollars and/or 12 months imprisonment. There is no indication that the applicant was convicted or sentenced in this case<sup>1</sup>.

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

**(B) ALIENS UNLAWFULLY PRESENT.-**

- (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

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<sup>1</sup> It is also noted that if the applicant was sentenced to six months or less imprisonment on a first-time misdemeanor hit and run under section 40-6-270, he would be eligible for the inadmissibility exception to section 212(a)(2)(A)(i)(I) of the Act for an alien's sole conviction where the maximum penalty possible does not exceed imprisonment for one year and the alien is not sentenced to a term of imprisonment in excess of six months. 8 U.S.C. § 1182(a)(2)(A)(ii)(II).

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(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 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 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 Attorney General regarding a waiver under this clause.

The applicant entered the United States without admission or parole on January 1, 2001. The applicant remained in the United States until his departure on April 30, 2011. Accordingly, the applicant accrued over one year of unlawful presence in the United States, and he now seeks admission within 10 years of his last departure. He is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest his inadmissibility on appeal.

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 any children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 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 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.

The applicant's qualifying relative in this case is his U.S. citizen spouse. The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the

applicant's children will not be separately considered, except as it may affect the applicant's spouse.

The record reflects that the applicant is a 33-year-old native and citizen of Brazil. The applicant's spouse is a 35-year-old native of Brazil and citizen of the United States. The applicant is currently residing in Brazil and the applicant's spouse and children are currently residing in Woodstock, Georgia.

The applicant asserts that his spouse and children are having a difficult time keeping life going without him and that his children's school has noticed a change in their demeanor. The applicant's spouse contends that she has received reports of a change in her children's attitude toward their teachers and peers since the departure of the applicant. The applicant's spouse further asserts that she and her children are suffering abandonment, stress and uncertainty due to separation from the applicant. It is also acknowledged that separation from a spouse nearly always creates hardship for both parties and the record demonstrates that the applicant's spouse is suffering emotional hardship in the absence of the applicant. However, in the aggregate, there is insufficient evidence in the record to show that the applicant's spouse is suffering from a level of hardship due to separation from the applicant that is beyond the common results of inadmissibility or removal of a spouse.

The applicant's spouse asserts that she cannot relocate to Brazil because she would suffer a decline in the quality of her life, including health care, housing, exposure to crime, and employment. It is noted that the record does not contain any country conditions reports concerning Brazil. The applicant asserts that he was the victim of crime in Brazil, but the record does not contain a police report for this crime. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The Department of State has not issued a travel advisory for Brazil, but its Country Specific Information notes that Brazil is a country with a robust economy, generally good medical care, and widely available prescription and over-the-counter medication. There are no specific indications or warnings concerning crime in Goiania, the area where the applicant's spouse states that she would relocate if she returned to Brazil.

The applicant's spouse asserts that she would be forced to live in a small home belonging to her husband's family if she returned to Brazil. The applicant's spouse also asserts that she would leave behind a business and family members if she departed from the United States. It is noted that the applicant's spouse is a native of Brazil and there is no indication that she and/or the applicant would be unable to seek employment in Brazil. Also, based upon the applicant's spouse's statement, there is evidence that the applicant's family would assist the applicant's spouse if she relocated to Brazil. The record does not contain any supporting documentation concerning the applicant's spouse's business in the United States, including financial documentation. The record also does not contain any letters of support from any of the applicant's spouse's relatives residing in the United States indicating the extent of her ties to this

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country. In this case, the record contains insufficient evidence to show that the hardships faced by the qualifying relative, if she were to relocate to Brazil, would rise to the level of extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse 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 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. 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.