



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **NOV 21 2013**

Office: LAWRENCE, MA

[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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Lawrence, Massachusetts. The matter 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 for one year or more and seeking readmission within 10 years of her last departure. The applicant's spouse is a U.S. citizen and her parents are lawful permanent residents. The applicant seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish extreme hardship to a qualifying relative and the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601), was denied accordingly. *Decision of the Field Office Director*, dated March 28, 2013.

On appeal, counsel asserts that sufficient evidence was submitted to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied. *Form I-290B, Notice of Appeal or Motion*, dated April 29, 2013.

The record includes, but is not limited to, counsel's brief, statements from the applicant and her qualifying relatives, letters from friends and family, medical records, financial records, a letter in Portuguese and country-conditions information about Brazil. The entire record, except for the untranslated Portuguese letter, was reviewed and considered in rendering a decision on the appeal.¹

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

.....

¹ Untranslated documents cannot be considered per the regulation at 8 C.F.R. § 103.2(b)(3).

(v) Waiver.-The Attorney General [now 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 [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.

The record reflects that applicant entered the United States as a non-immigrant with a B-2 visitor's visa on July 29, 2003, and she was authorized to remain in the United States until January 28, 2004. In his decision the Field Office Director states, on two different pages, that the applicant testified that she remained in the United States until September 2005 and that she testified that she departed from the United States in December 2004. The Field Office Director also indicates that the applicant began accruing unlawful presence in December 2004. The Field Office Director's decision is inconsistent concerning the applicant's departure date.

The applicant's Form I-601 and her statement indicate that she departed the United States in December 2004. Her mother also mentions this date in her statement. On appeal counsel claims that December 2004 is the correct departure date. Counsel has not provided objective evidence, such as a passport stamp or school documents obtained after the applicant's return to Brazil, to corroborate this assertion. The AAO notes that without documentary evidence to support this claim, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. 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)). Therefore, because the applicant has not satisfied her burden of proof, the AAO accepts September 2005 as her departure date. The applicant accrued unlawful presence from January 28, 2004, the date her authorized period of stay expired, until her departure in September 2005. The applicant 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 and seeking readmission within ten years of her September 2005 departure from the United States.² The applicant's qualifying relatives are her spouse and parents.

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

² If the applicant establishes December 2004 as her departure date, she becomes inadmissible under section 212(a)(9)(B)(i)(I) of the Act, instead of section 212(a)(9)(B)(i)(II), for being unlawfully present for a period of more than 180 days but less than one year and seeking readmission within three years of her departure from the United States.

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.

Counsel states that the Field Office Director made several incorrect statements related to the applicant's relationship with her stepson, the applicant's spouse's guardianship of his son, and the applicant and her spouse's living arrangements. The AAO acknowledges that the applicant's spouse's living and guardianship situations may have changed through the pendency of the applicant's I-601 proceedings. These issues are material to the applicant's spouse's hardship to the extent discussed below.

The AAO will first address hardship to the applicant's qualifying relatives upon relocation to Brazil. Counsel states that the applicant's spouse would suffer emotionally due to his separation from family and friends; he does not have a degree or specialized skills; he would leave behind educational and career opportunities in the United States; and though of Brazilian heritage, he lacks Brazilian citizenship.

Counsel cites to a U.S. government report about Brazil to support assertions that the applicant and her spouse would suffer medical hardship there. According to the most recent version of the cited report, medical care in Brazil varies in quality and may not meet U.S. standards outside of major cities. U.S. Department of State, Bureau of Consular Affairs, Brazil, Country Specific Information, October 15, 2013, http://travel.state.gov/travel/cis_pa_tw/cis/cis_1072.html#medical. The report also lists and describes various illnesses in Brazil that counsel believes pose risks to the applicant and her spouse. Moreover, counsel relies on the same report's sections concerning criminal and human-rights issues to assert that survival there would be a daily struggle because of criminal organizations, natural disasters and human-rights abuses by state-level security forces. Counsel also asserts the applicant's spouse would experience financial hardship in Brazil and cites to a CIA report to corroborate this claim. Counsel quotes the report's statistics: Brazil's unemployment rate was 6.7% in 2010, and the population living below the poverty line was 26% in 2008.

The applicant's spouse states that in Brazil he would need to apply for Brazilian citizenship for himself and his son; he would struggle to adjust to a new culture, country and language; he does not speak fluent Portuguese and cannot read or write it; all of his and the applicant's immediate family reside in the United States; and he has never left the United States. The applicant's spouse also told his psychologist that he does not know his relatives in Brazil and he would not be able to find a decent job there.

The applicant's father states that he is a proud U.S. resident, and living in the United States was his dream. He also states that he feels pain concerning the applicant's immigration status, because he feels responsible for her staying in the United States beyond the period authorized. The applicant's father's physician states that he is under her care for diabetes, high blood pressure, joint pain disorder and seborrheic dermatitis. The applicant's father's medical records reflect that he was recently diagnosed with depression. The record includes a prescription note for anti-depression medication.

The applicant's mother's nurse practitioner states that the applicant's mother has hypertension, arthritis, hypothyroidism and pre-diabetes.

The record reflects that the applicant's spouse may experience some level of difficulty in Brazil due to the aforementioned country conditions. The applicant's spouse has family and friends in the United States, and his language abilities are limited. The record is not clear concerning the applicant's spouse's custody of his son and whether his son could relocate with him to Brazil. The record also is not clear about the severity of the applicant's parents' medical issues and whether they could receive suitable medical care in Brazil. The record includes limited evidence of their ties to the United States and no evidence of financial or other forms of hardship. Based on the evidence in the record, the AAO finds that there is insufficient documentary evidence of emotional, financial, medical or other types of hardship that, considered in their totality, establish that a qualifying relative would suffer extreme hardship upon relocation to Brazil.

Addressing the hardships the applicant's spouse would experience if he remained in the United States without her, counsel states that the applicant is a supportive and understanding spouse; the applicant's spouse fears that his life would deteriorate without the applicant's support and patience; the applicant and her spouse are concerned that the applicant's removal will cause emotional and psychological problems for the applicant's spouse; and the applicant's spouse's depressed immune system will make him susceptible to injuries and illnesses. Counsel also states that the applicant is the main source of income for the couple and without her, her spouse would not be able to pursue his education.

The applicant's spouse states that he depends on the applicant emotionally, physically and financially; his mother passed away in January 2012; and he is in a custody battle with his grandparents over his son. The applicant's spouse also states that his life would go downhill if the applicant is forced to leave the United States, and he wants his son to grow up with two parents.

The psychologist who evaluated the applicant's spouse found he tested positive for symptoms of depression; his symptoms are not severe enough to meet the diagnoses of depression and anxiety disorder; his psychological and emotional state will likely be aggravated if the applicant returns to Brazil; and without her he faces a high risk of resuming his marijuana use and, given his background, "getting into trouble with the law." The applicant's spouse stated to the psychologist that the applicant is from [REDACTED] Brazil's second-most violent city; he is also worried about the applicant's health, as she required regular medical checkups related to a benign condition; and she would have to rely on national health care there.

The applicant and her spouse's 2011 and 2012 tax records reflect that the applicant earns the majority of the income for the family. The applicant's spouse's employer states that her spouse has been a part-time driver for his company since 2011.

The record includes an unsigned service plan for the period between April 2011 and October 2011, prepared by the Commonwealth of Massachusetts Department of Children and Families, reflecting that the applicant and her spouse seek reunification with the applicant's spouse's son.

The applicant's father states that it breaks his heart to see the applicant and her spouse suffer so much; his spouse takes medication for anxiety; he has been going to therapy for anxiety as his depression has worsened since the applicant's Form I-601 was denied; and he cannot bear the thought of the applicant being taken from him.

A psychotherapist states that the applicant's father was seen for behavioral health services and has agreed to meet for monthly individual therapy. The applicant's father's physician states that he is under her care for diabetes, high blood pressure, joint pain disorder and seborrheic dermatitis. The applicant's father's medical records reflect that he was recently diagnosed with depression. The record includes a prescription note for anti-depression medication.

The applicant's mother states that it was difficult in the past for her family to be separated and that she cannot rest. As mentioned, the applicant's mother has hypertension, arthritis, hypothyroidism and pre-diabetes. Her medical records reflect that she recently began taking medication for anxiety and insomnia.

The record reflects that the applicant's spouse and parents would experience emotional difficulty without the applicant. There is no evidence, however, that the applicant assists her parents with their medical conditions or that they would experience additional hardships upon separation from her. Moreover, the record indicates that the applicant's spouse may experience financial hardship without the applicant. The record, however, does not include documentary evidence of safety issues in [REDACTED] or of the applicant's claimed medical issues to support assertions that her spouse would suffer emotional hardship on separation caused by worrying about her in Brazil. The record lacks sufficient documentary evidence of emotional, financial, medical or other types of hardship that, in their totality, establish that a qualifying relative would experience extreme hardship upon remaining in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. Therefore, the AAO finds that no purpose would be served in discussing whether she merits a waiver as a matter of overall discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.