

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**



(b)(6)

[Redacted]

Date: APR 18 2014

Office: SANTA ANA, CA

FILE: [Redacted]

IN RE:

Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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.

Thank you,

Handwritten signature of Ron Rosenberg in black ink.

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Santa Ana, California. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 for having been unlawfully present in the United States for more than one year. The applicant is married to a U.S. citizen and both of her parents are lawful permanent residents. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to reside with her family in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends that although USCIS listed some of the evidence submitted in support of the waiver application, it made no analysis whatsoever and failed to consider the totality of the circumstances. Counsel contends USCIS failed to consider the psychological report that was submitted or country conditions in Brazil.

The record includes, but is not limited to, the following documents: a copy of the marriage certificate of the applicant and her husband, Mr. [REDACTED] indicating they were married on January 28, 2011; a declaration from Mr. [REDACTED] a declaration from the applicant's sister; a letter from Mr. [REDACTED] employer; copies of tax records, bills, and other financial documents; a psychological report; copies of divorce decrees; a copy of the U.S. Department of State's Human Rights Report for Brazil and other background materials; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

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

(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 Attorney General [now the 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 Attorney General [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.

In this case, the record shows, and counsel does not contest, that the applicant unlawfully resided in the United States from March 2003 until April 2008. The applicant re-entered the United States on December 6, 2010, using a B-2 visitor's visa with authorization to remain until June 5, 2011. The applicant married a U.S. citizen on January 28, 2011, and continues to reside in the United States. 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 admission within ten years of her departure.¹

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

¹ The applicant may also be inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to obtain an immigration benefit. The record does not contain a copy of the applicant's visa application that she filed in order to obtain the B2 visa she used to re-enter the United States on December 6, 2010. If the applicant misrepresented her previous unlawful presence in the United States, she would be inadmissible under section 212(a)(6)(C)(i) of the Act. In addition, the applicant married her husband within sixty days of her arrival and should be given the opportunity to show that she did not misrepresent her intention of merely visiting the United States, rather than taking up residence in the United States to live with her U.S. citizen husband. See *DOS Foreign Affairs Manual*, § 40.63 N4.7-3. If the applicant is, in fact, inadmissible under section 212(a)(6)(C)(i) of the Act, she would be eligible to apply for a waiver under section 212(i) of the Act, which requires the same showing of extreme hardship to a qualifying relative as under section 212(a)(9)(B)(v) of the Act.

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.

In this case, the applicant’s husband, Mr. [REDACTED] states that he was in a serious depression after his first marriage ended in divorce. He states that he met the applicant in October of 2007 and after she left for Brazil in April 2008, they kept in touch until she came back to the United States in December 2010. Mr. [REDACTED] contends that the applicant has a son from her previous marriage, that he has children from a previous marriage, and that they are now a family. Since learning his wife is inadmissible to the United States, he contends he has been very stressed, cannot sleep, and sometimes feels he cannot breathe. He reportedly cannot afford to pay for childcare because and he has struggled financially since the economic downturn. He claims his wife helps as much as she can, earning money by watching her sister’s children, and that he would be unable to pay the bills alone. Furthermore, Mr. [REDACTED] contends that he cannot relocate to Brazil because he was born in the United States, has all of his friends and family in the United States, and does not read or write Portuguese. He fears being unable to find work in Brazil and claims his children would be unable to move to Brazil with him. He also contends the conditions in Brazil are horrible and unsafe. According to Mr. [REDACTED] his wife has been robbed a few times when she lived there, her uncle was once kidnapped, and her cousin was held at gunpoint.

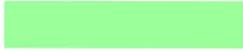
After a careful review of the evidence, the record establishes that if Mr. [REDACTED] decides to remain in

the United States without his wife, he would suffer extreme hardship. The record contains a psychological report describing Mr. [REDACTED]'s history of depression and anxiety from childhood as well as after his divorce. The report indicates Mr. [REDACTED]'s parents divorced when he was ten years old and that his father was not involved in his life, causing him to be traumatized by the emotional abandonment. The therapist states that Mr. [REDACTED] suffers from hair loss due to anxiety, gets frequent headaches, and suffers from high blood pressure. The therapist diagnosed him with Major Depressive Disorder and Generalized Anxiety Disorder. In addition, the record contains financial documents that corroborate Mr. [REDACTED]'s contention that he is struggling financially and would be unable to pay for childcare on his own. A letter from his employer states that Mr. [REDACTED] works full-time as a Customer Support Representative and copies of his pay stubs indicate he earns approximately \$1,600 every two weeks. According to his 2010 tax return, he earned \$30,033 in wages. However, the record also shows his rent is \$1,835 per month and a copy of his divorce decree indicates that he has joint custody of his two children and must pay his ex-wife \$658 per month in child support. The record therefore establishes the hardship Mr. [REDACTED] would experience as a single, full-time working parent to three minor children with limited income, while dealing with his own mental health issues. Considering the unique circumstances of this case cumulatively, the record establishes that the hardship the applicant's husband would experience if he remains in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Moreover, the record establishes that if Mr. [REDACTED] relocated to Brazil to avoid the hardship of separation, he would experience extreme hardship. As stated above, Mr. [REDACTED]'s divorce decree indicates that he and his ex-wife have joint custody of their children and the AAO acknowledges Mr. [REDACTED]'s contention that his children would be unable to move with him to Brazil. The AAO also recognizes the difficulty Mr. [REDACTED] would have in finding a job in Brazil that would enable him to support his family and continue making his court-ordered child support payments, particularly considering he is not fluent in Portuguese. Moreover, the AAO takes administrative notice that the U.S. Department of State describes the high crime rate in most urban centers in Brazil and that the murder rate, and the rates of other crimes, are more than four times higher than that of the United States. *U.S. Department of State, Country Specific Information*, dated October 15, 2013. Considering these unique circumstances cumulatively, the AAO finds that the hardship Mr. [REDACTED] would experience if he relocated to Brazil to be with his wife is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The applicant also merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's unlawful presence in the United States and periods of unauthorized employment. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including her U.S. citizen husband, son, step-children, and sister, and her lawful permanent resident parents; the extreme hardship to the applicant's entire family if she were refused admission; and the applicant's lack of any arrests or criminal convictions.



The AAO finds that the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

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 been met.

ORDER: The appeal is sustained.