

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **APR 28 2014** Office: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

IN RE: Applicant: [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:

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,

A handwritten signature in cursive script that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, Nebraska Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 seeking readmission within ten years of his last departure from the United States. The applicant was also found to be inadmissible under section 212(a)(1)(A)(iv) of the Act, 8 U.S.C. § 1182(a)(1)(A)(iv), for cannabis addiction. The record indicates that the applicant is married to a U.S. citizen, and he is the father of a U.S. citizen child. He is 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 and child.

The Director determined that, as there is no waiver for the applicant's inadmissibility under section 212(a)(1)(A)(iv) of the Act, no purpose would be served by granting his waiver under section 212(a)(9)(B)(v) of the Act, and the Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Service Center Director*, dated July 29, 2013.

On appeal, counsel contends that granting the application would serve a purpose, because the applicant is eligible for a new medical examination in the near future that may show that his cannabis addiction is in remission,¹ and therefore the AAO should determine whether the applicant is eligible for waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act.

The record includes, but is not limited to, the following documentation: counsel's brief in support of the appeal; a psychological evaluation of the applicant's spouse; medical documentation for the applicant's spouse; copies of documents establishing identity and relationships; financial documentation; copies of arrest reports for the applicant's motor vehicle violations;² and a letter of reference. The entire record was reviewed and considered in rendering a decision on the appeal.

¹ The record indicates that the applicant was determined to have a Class A inadmissibility for cannabis addiction on October 31, 2012. If the applicant's addiction were in remission, he would have a Class B inadmissibility, which does not require a waiver. According to the Centers for Disease Control (CDC) Technical Instructions for Physical or Mental Disorders with Associated Harmful Behaviors and Substance-Related Disorders: "The current version of the [American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders] defines sustained, full remission as a period of at least 12 months during which no substance use [has] occurred." See <http://www.cdc.gov/immigrantrefugeehealth/exams/ti/civil/mental-civil-technical-instructions.html> [accessed April 23, 2014]. Thus, the applicant became eligible for a medical examination to show that his cannabis addiction was in full remission on October 12, 2013.

² The record additionally shows that the applicant was also arrested for disorderly conduct and assault and battery in 2008. However, it appears that these charges were dismissed; therefore the director did not find applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(a)(9) of the Act 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.

The record indicates that the applicant entered the United States through Mexico without inspection in May 2003. The applicant married a U.S. citizen on May 27, 2005 and filed Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) on June 16, 2006. The Form I-485 was denied on June 5, 2007. The applicant appeared before an immigration judge, who granted him voluntary departure. The applicant timely departed the United States on December 26, 2008. The applicant was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States. His period of unlawful presence began in May 2003 and stopped when he filed for adjustment of status on June 16, 2006.³ His period of unlawful presence resumed on June 5, 2007, when the Form I-485 was denied, and continued until December 28, 2008, when he departed. Therefore he was unlawfully present for a period of more than one year when he departed from the United States. The applicant does not contest his inadmissibility.

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

(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.

³ The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [now Secretary of Homeland Security, "Secretary"] as an authorized period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. See Memorandum by Donald Neufeld, Acting Associate Director, Domestic Operations Directorate; Lori Scialabba, Associate Director, Refugee, Asylum and International Operations Directorate; Pearl Chang, Acting Chief, Office of Policy and Strategy, dated May 6, 2009.

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 his child 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 U.S. Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 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 (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.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). As the applicant is ineligible for a waiver for his inadmissibility under section 212(a)(1)(A)(iv) of the Act, the AAO would not be able to sustain the appeal absent evidence that his cannabis addiction is in full remission, as the Director noted in his decision of July 29, 2013. The applicant has submitted no evidence of remission as of the date of this decision.

The record lacks direct statements from counsel, the applicant and the applicant's spouse concerning the applicant's spouse's hardship. Many details about the applicant's spouse's hardship are outlined in a psychological evaluation, dated February 21, 2011, and prepared after a three-hour interview conducted on January 25, 2011. The psychological report indicates that the applicant's spouse has suffered from major depression for more than two years and that she has also been experiencing acute anxiety attack symptoms as a result of her separation from the applicant. According to the psychological report, the applicant's spouse was diagnosed with clinical depression ten years ago, and as a result of this diagnosis and her inability to maintain employment, she has been receiving Social Security disability benefits since then.

Moreover, in the same evaluation the psychologist states that the applicant's daughter exhibits symptoms of separation anxiety disorder and suffers from asthma. The report also refers to their daughter having been sexually molested by her schizophrenic uncle after the applicant's departure. The psychologist emphasizes that as a result, the applicant's spouse claims to feel unsafe without the applicant; she also has been suffering more acute psychological symptoms related to anxiety and depression in the wake of this event. Moreover, according to the report, the applicant's spouse told the psychologist that she was sexually abused by her father when her mother was in a psychiatric hospital for one month after being diagnosed with schizophrenia, which likely would intensify her emotional problems in relation to their daughter.

The psychologist recommends that the applicant's spouse continue her treatment with a combination of individual psychotherapy and antidepressant medication. The record includes a letter from a doctor indicating that between May and November 2011, the applicant's spouse was involved in a six-month study of anti-depressant effectiveness, and she was treated with increased dosages "to

lessen her depression.” However, no evidence in the record shows whether the applicant’s spouse continued her treatment after November 2011. In addition, no evidence in the record addresses whether the applicant’s spouse currently is undergoing psychotherapy.

The psychologist in her evaluation indicates that the applicant’s spouse is experiencing economic hardship without the applicant, because she has been unable to work steadily and was unemployed for a long period of time. The financial documentation in the record is limited to tax records for the applicant’s spouse from 2003 to 2005, and the applicant’s spouse’s statement on Form I-864, Affidavit of Support under Section 213A of the Act, dated June 9, 2006, stating that in 2005 she earned \$12,883. The psychological evaluation indicates that the applicant’s spouse received her certified nursing assistant (CNA) credentials in 1995 and completed a program in 2004 to become certified as a massage therapist. The applicant’s spouse told the psychologist that she worked on and off for three years, and she owned her own business for six months. Public information indicates that the applicant’s spouse established her own therapeutic massage company at her home in 2010, and its estimated annual revenue was \$37,000. The record lacks information about the applicant’s spouse’s company and other evidence of the applicant’s spouse’s current financial situation. Thus the evidence in the record is insufficient to conclude that the qualifying spouse is unable to meet her financial obligations in the applicant’s absence.

With respect to the medical hardship of the applicant’s spouse, the record includes a letter from a health center, dated November 8, 2012, indicating that she has high blood pressure and high cholesterol and that she has been prescribed medication for her blood pressure. While the nurse practitioner who wrote this letter believes that having the applicant in the United States would help the applicant’s spouse, there is no indication that the applicant’s spouse cannot receive treatment for her conditions without the applicant. The psychological examination lists additional medical conditions of the applicant’s spouse, including a history of kidney disease on the mother’s side of her family, frequent urinary tract infections, hay fever, and dental problems; however, no evidence in the record corroborates these statements. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 AAO recognizes that the applicant’s spouse is experiencing hardship as a result of her separation from the applicant, especially with respect to the serious emotional difficulties that she is facing. Although the AAO is sympathetic to the family’s circumstances and recognizes that the input of any health professional is respected and valuable, the record does not establish that the emotional, medical, and financial hardships that the applicant’s spouse is experiencing, considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship as contemplated by statute and case law. Her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

To address the hardship that the applicant’s spouse may experience if she relocates to Brazil to be with the applicant, the applicant submits the psychological evaluation, with little supporting

evidence. The record indicates that the applicant's spouse was born in the United States and claims to be unfamiliar with the language and customs of Brazil. According to the psychological evaluation, the applicant's spouse has a daughter from a previous relationship, and she believes that she will experience hardship if separated from her daughter. However, the applicant's spouse also states that her daughter is now married and lives in another state.

Addressing the financial hardship she may experience if she were to relocate, the applicant's spouse contends that she will lose her disability benefits there. The applicant provides no evidence showing that Social Security's policy is to stop disability payments for individuals living outside the United States. Additionally, according to the psychological evaluation, the applicant's spouse states that the applicant resides with his mother in Brazil, the economy is very difficult there, and he is unable to earn sufficient income to support the family working construction jobs. However, no evidence in the record corroborates these contentions. In addition, the record includes no evidence addressing whether or to what extent the applicant receives assistance from family members there.

The psychologist, in her discussion of a relocation scenario for the applicant's spouse, also refers to violent crime in Brazil. She notes the applicant's spouse's concerns that she and their daughter would be perceived as wealthy and thus become targets for criminals there. The applicant, however, offers no country-conditions evidence to support the likelihood of security conditions contributing to his spouse's hardship if she were to relocate to Brazil.

The hardships ascribed to the applicant's spouse upon relocation to Brazil, as referenced in the psychological report of February 21, 2011, are not supported by documentary evidence. The record lacks evidence of financial concerns; country conditions, including the availability of suitable medical care and security; and the applicant's specific living conditions in Brazil. Based on the evidence on the record, the applicant has not established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Brazil to reside with him.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate but expected disruptions and difficulties arising whenever a spouse is refused admission to the United States. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship she would face rises to the level of extreme as contemplated by statute and case law. As the applicant has not established extreme hardship to a qualifying family member and remains inadmissible under section 212(a)(1)(A)(iv) of the Act, no purpose would be served in determining whether the applicant merits a waiver as a matter of 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.