

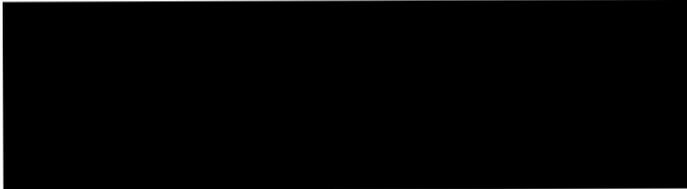
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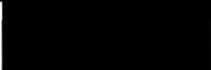
U.S. Citizenship
and Immigration
Services

PUBLIC COPY



#3

FILE:



Office: LIMA, PERU

Date:

MAR 03 2009

IN RE: Applicant:



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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, 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, pursuant to the record, entered the United States as a tourist with a valid nonimmigrant visa in March 1995. She extended her nonimmigrant status until February 28, 1996. She subsequently remained beyond the period of authorized stay, and did not depart the United States until November 2005. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until her departure in 2005. The applicant was thus found to be inadmissible to the United States under 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. She 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 be able to reside in the United States with her U.S. citizen spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated October 27, 2006.

In support of the appeal, the applicant submitted the following, *inter alia*: Form I-290B, Notice of Appeal (Form I-290B), dated November 10, 2006; a letter from the applicant, dated November 11, 2006; and medical documentation in regards to the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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.

(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....

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These 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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant cannot be considered, except as it may affect the applicant's U.S. citizen spouse.

The applicant's U.S. citizen spouse contends that he will suffer extreme emotional and financial hardship if the applicant is removed from the United States. In a declaration he states that he would suffer extreme emotional hardship due to the long and close relationship they have and that he would suffer extreme financial hardship as he is the sole provider for the family, and maintaining two households is a financial hardship as he is a small business owner. *Letter from* [REDACTED], dated January 26, 2006.

In support of the emotional hardship referenced by the applicant's spouse, a letter is provided by a registered nurse, confirming that the applicant's spouse has a longstanding history of anxiety disorder with panic, and any undue stress exacerbates his condition. Furthermore, the letter states that the applicant's spouse is currently using multiple medications for his condition. *Letter from* [REDACTED] [REDACTED] dated November 8, 2006.

Although the input of any professional is respected and valuable, the AAO notes that the submitted letter was written by a registered nurse of a family practice. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse, nor a specific short and long-term treatment plan for the panic disorders referenced by [REDACTED] to further support the gravity of the situation. The conclusions reached in the submitted letter do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the registered nurse's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Moreover, the applicant's spouse asserts that he has battled anxiety disorders with medical assistance for a long time; it has thus not been established that his condition will worsen to an extreme degree due to the applicant's removal from the United States.

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Regarding the financial hardship referenced by the applicant's spouse, the AAO notes that courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.").

No documentation with respect to the applicant and her spouse's personal and business financial situation, including income and expenses, assets and liabilities, has been provided. Nor does the record indicate what specific contributions the applicant made to the household prior to her departure from the United States, to establish that her physical absence is causing extreme financial hardship to her spouse. Finally, it has not been established that the applicant is unable to obtain gainful employment abroad, thereby affording her the opportunity to assist her spouse with respect to their finances. 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)). While the applicant's spouse may need to make adjustments with respect to the family's financial situation while the applicant resides abroad due to her inadmissibility, it has not been shown that such adjustments would cause the applicant's spouse extreme hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he 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. The AAO concludes that based on the evidence provided, it has not been established that the

applicant's spouse will suffer extreme emotional and/or financial hardship due to the applicant's removal.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. The applicant's spouse states that relocating abroad would mean a loss of his business, vulnerability to increased panic attacks due to flying, lack of familiarity with the Portuguese language, and the inability to work. *Supra* at 1.

To begin, it has not been established that without proper medication and treatment, the applicant's spouse would be unable to fly to meet the applicant in Brazil to reside long-term. Moreover, the AAO notes that it has not been established that the applicant's spouse would be unable to obtain medical treatment/medication for his mental health issues and/or that his mental health issues would be ameliorated based on the fact that he would be reunited with his spouse. As for his business ownership, it has not been established that said business can not continue without the applicant's spouse's physical presence in the United States. Finally, it has not been established that unfamiliarity with the Portuguese language would cause the applicant's spouse extreme hardship. As such, it has not been established that the applicant's spouse will endure extreme hardship were he to relocate to Brazil to reside with the applicant.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were not permitted to reside with him in the United States; and moreover, the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing 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. The waiver application is denied.