PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

H1B4

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[redacted]

FILE: [redacted] Office: PHOENIX, AZ Date: JUL 17 2003

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(b) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B).

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Phoenix, Arizona. 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. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days and less than one year. The applicant is married to a U.S. citizen, and he is the beneficiary of a petition for alien relative filed in December 1997. The applicant seeks a waiver of inadmissibility in order to remain with his wife and children in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *See District Director Decision,* dated January 9, 2002.

On appeal, counsel asserts that the Immigration and Naturalization Service ("INS", now known as the Bureau of Citizenship and Immigration Services, "Bureau") engaged in "inequitable and unconscionable" behavior by not placing possible bar to admission warnings (Form I-831) at the front of the applicant's advance parole approval packet rather than at the back of the packet. Counsel asserts further that the applicant's wife (Mrs [redacted] will suffer emotional and financial hardship if the applicant is not granted a waiver of inadmissibility

Counsel states that:

> It is the Applicant's contention that the Form I-831 should have been placed at the front of the documentation sent to him, and worded and highlighted in such a fashion that it would immediately cause him concern such that he would pause and read the actual wording of the document to get an understanding of the seriousness of this issue.

A review of the I-831 sent to the applicant indicates that the form is only one paragraph long and clearly states:

> If, after April 1, 1997, you were unlawfully present in the United States for more than 180 days before applying for adjustment of status, you may be found inadmissible under section 212(a)(9)(B)(i) of the Act when you return to the United States to resume the proceedings of your application. If you are found inadmissible, you will need to qualify for a waiver of inadmissibility in order for your adjustment of status application to be approved.

The record reflects that the applicant filed his request for advance parole and his adjustment of status application

simultaneously in December 1997. This was clearly more than 180 days after April 1, 1997, and the wording of the I-831 unequivocally states that in a situation such as the applicant's, the applicant may be found inadmissible and need to qualify for a waiver of inadmissibility.

The fact that the I-831 warning was contained on the last page of the applicant's advance parole approval packet does not show inequitable or unconscionable behavior on the part of the INS. The entire approval packet consisted only of a brief cover letter, the actual one page advance parole document (Form I-512), and the one page, I-831 letter warning of possible bars to admission. The applicant's failure to pay attention to the I-831 because it was placed behind his I-512 letter appears to be the result of negligence on the part of the applicant rather than due to any inequitable or unconscionable behavior on the part of the INS.

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

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who -
>
> (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and again seeks admission within 3 years of the date of such alien's departure or removal [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.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident ***spouse or parent***. Congress specifically does not mention extreme hardship to a U.S. citizen or resident child. The doctor reports and the claims pertaining to hardship to the applicant's children will thus not be considered.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed to be relevant in determining whether an alien had

established extreme hardship. These factors included 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.

Counsel asserts that Mrs. [redacted] will suffer financial and emotional hardship if she moves to Brazil for three years with her husband. Counsel further asserts that Mrs. [redacted] was born and raised in the U.S. and that she would be separated from her entire family. No evidence or information was submitted to establish the nature of Mrs. [redacted] family ties or to indicate any specific hardships related to her family ties. Counsel additionally asserts that Mrs. [redacted] does not speak Portuguese and would face difficulty in finding work in Brazil, and that Mrs. [redacted] would have a lower standard of living than she is used to in the United States.

In addition, counsel asserts that Mrs. [redacted] will suffer financial and emotional hardship if she remains in the U.S. without her husband. Counsel asserts that Mrs. [redacted] currently does not work so that she may remain home with her two children and that she is dependent on the applicant's income. Counsel asserts further that it would be difficult for Mrs. [redacted] to find work since she has been out of the workforce. No information was provided to demonstrate Mrs. [redacted] actual income and expenses, and no specific details were provided as to why Mrs. [redacted] would be unable to find work.

Moreover, U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and did not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The court then reemphasized that the common results of deportation are insufficient to prove extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if his waiver of inadmissibility is not granted.

It is noted that the record contains several affidavits attesting to the applicant's good character. This evidence is relevant to whether discretion should be exercised in the applicant's case. However, because the applicant failed to establish extreme

hardship to a qualifying relative, he is statutorily ineligible for relief pursuant to section 212(a)(9)(B)(v). Therefore, 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, 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.