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**U.S. Citizenship
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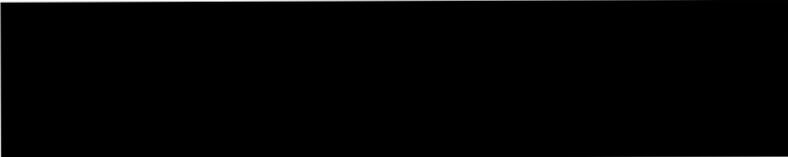
FILE: [Redacted] Office: LONDON, UK

Date: 02/04

IN RE: [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:



PHOTIC COPY

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Officer-in-Charge (OIC), London, denied the Application for Waiver of Ground of Inadmissibility. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of the United Kingdom who was 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 present unlawfully in the United States for one year or more and seeking admission within ten years of the date of her last departure or removal from the United States. 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 return to the United States and reside with her U.S. citizen husband. The OIC concluded that the applicant failed to establish that extreme hardship would be imposed on her husband, [REDACTED], and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the OIC*, dated April 12, 2006.

On appeal, counsel for the applicant contends that the OIC “overlooked and misconstrued the statements presented in support of the waiver.” *Notice of Appeal to the Administrative Appeals Office (AAO), Form I-290B*, dated April 27, 2006; *Brief in Support of Appeal*, dated May 19, 2006. The record includes (1) a letter from one of [REDACTED]’s doctors, dated February 18, 2005, noting that [REDACTED]’s father recently passed away, and that this event and the additional stress of the denial of a visa for his wife are causing [REDACTED] “psyc[h]osocial effects” and that bringing his wife back home would greatly help him; (2) a letter, dated April 22, 2006, from a different doctor who has been [REDACTED]’s physician for six years and has been treating him for hypertension since April 2005, when, according to the doctor, the condition was first discovered, noting that he is taking medication for hypertension and is also being treated for depression and severe headaches; the doctor notes that a move to England is not feasible due to [REDACTED]’s medical condition, and that without his wife with him to help in his recuperation, required back surgery will need to be delayed; the doctor also notes that “medical care in England, although fair to good, is not adequate to meet [REDACTED]’s needs.”; attached to the letter is an explanation, based on the “Holmes-Rahe Social Readjustment Rating Scale,” of how the life changes that would result from a move to England would affect [REDACTED]’s health, noting that “if he is forced to move to England, he is clearly within the highest-risk range of developing medical illness or injury in the two years following his move.”; (3) a letter, dated April 20, 2006, from Mr. [REDACTED] employer, the Fire Chief of North Kingstown Fire Department, affirming that [REDACTED] has been a firefighter there since 1979 and is a valuable employee, noting that [REDACTED] “has applied for and has been denied employment in the Fire Service in the UK, because of his age,” and if [REDACTED]’s wife were allowed to return to the United States, [REDACTED] would be able to continue to provide his expertise to the community; (4) wire transfer authorization forms indicating that [REDACTED] has been sending the applicant money approximately every month since September 2004; and (5) printouts, dated April 23, 2006, from the Benefit Estimate Results website of the Employees’ Retirement System of Rhode Island calculating estimated monthly gross benefit amounts for [REDACTED] of \$3,477.83 if retirement is on June 30, 2006 (based on an average compensation of \$60,157), and \$5,031.39 if retirement is on June 30, 2010 (based on an average compensation of \$80,502); and (6) a statement from the applicant in support of her waiver application asserting that the denial of her visa has been an extreme hardship financially and emotionally for her and her

husband and that [redacted] has medical problems that require her to be with him during his recuperation. 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.

Regarding the applicant's ground of inadmissibility, the record reflects that the applicant entered the United States on October 16, 2001 under the Visa Waiver Program with authorization to remain for 90 days. The applicant states that she left the United States for Canada on January 12, 2002 and returned to the United States three days later, remaining until December 8, 2004. She thus accrued over a year of unlawful presence. The applicant is seeking admission within 10 years of her last departure and is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year. The applicant does not contest this finding.

A section 212(a)(9)(B)(v) waiver of the bar to admission under section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant herself would experience is not a permissible consideration under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an

applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. In examining whether extreme hardship has been established, the BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). In addition, U.S. courts have held that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and that “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The record in this case indicates the applicant, en route to the United States from the United Kingdom with her then fiancé ██████████, attempted to re-enter the United States on the Visa Waiver Program on January 4, 2005. She was found inadmissible at that time. She married ██████████ the following month in Canada and is the beneficiary of an approved I-130 Petition for Alien Relative. She applied for a visa in London on March 7, 2005 and requested a waiver of inadmissibility on January 9, 2006. The applicant states that she met ██████████ in 2001, but that they did not begin to date until January 2004. ██████████ was born in Providence, Rhode Island in 1959 and he has worked as a firefighter in Rhode Island since 1979. He currently suffers from high blood pressure, a recently discovered condition, for which he is taking medication. He states that he is close to his three step children and a six-year old grandson, and that these familial relationships would be disrupted and cause him more stress if he moved to the United Kingdom.

According to his doctors, ██████████ is suffering from stress due to the recent death of his father and separation from his wife, and he is at risk of developing a medical illness or injury if forced to move to the United Kingdom. One of his doctors also indicated that ██████████ had a back injury but that back surgery must be postponed because ██████████ wife is not in the United States to help him recuperate; he also stated that medical care in the United Kingdom is inadequate for ██████████ needs. The AAO notes that no hospital or other medical records have been submitted and there is no evidence of when ██████████ suffered a back injury, what kind of injury it was or what kind of surgery is needed, making it difficult to assess whether the physical stress of moving to the United Kingdom would be a hardship, or whether, if his wife were not available to help him, nursing assistance or help from other family members would be available and appropriate during his recuperation. Although the doctor’s statement regarding health services in the United Kingdom is evidence of his expert opinion, no substantiating evidence was submitted, such as reports or comparative studies on health care in the United States and the United Kingdom, to support his assertions. In

fact, there is no evidence in the record that the medicine used to treat [REDACTED] is unavailable in the United Kingdom and no evidence of the type of surgery needed or lack of availability of such surgery in the United Kingdom. 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)).

Regarding the financial repercussions of a move to the United Kingdom, clearly [REDACTED]'s pension benefits from his current job would be reduced if he retired early. Counsel states that if [REDACTED] retired now instead of in 2010, his monthly benefit would be reduced to \$3500 instead of \$5000 per month. The evidence submitted, however, does not clarify the basis for the estimated benefits. Without documentary evidence to support the 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). The record does not contain evidence of [REDACTED] current salary; there is no evidence that he would have earned an "average compensation" of over \$80,000 (as noted in the Benefit Estimate Results computer printout, *supra*) if he waited until 2010 to retire; and there is no evidence that he would not be able to find employment in the United Kingdom, despite statements to that effect by counsel and [REDACTED] employer. Again, 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. at 165. There is also no indication that the applicant would not be able to supplement the couple's income in the United Kingdom and no indication that [REDACTED] would not be able to meet his financial needs whether he chose to retire or remain at work.

Although the record reflects that the couple would prefer to live and work in the United States, and that Mr. [REDACTED] has all of his family ties and a stable worthwhile employment in the United States that he does not want to leave, there is no evidence in the record that if [REDACTED] moved to the United Kingdom to avoid the stress and depression of separation, that he would be unable to adjust to that change or that he would suffer extreme hardship as a result. There is medical evidence that [REDACTED] is suffering from stress, but there is no evidence that this cannot be treated in the United Kingdom. Despite indications that moving to a new environment and giving up his job would be difficult and could lead to health risks, the stress that has resulted from the absence of his wife would be alleviated if he joined her in the United Kingdom, mitigating such health risks to some extent, based on the "Holmes-Rahe Social Readjustment Rating Scale," *supra*. Although medical care may be optimal in the United States, there is no evidence that appropriate care is not available in the United Kingdom. Financially, the evidence indicates that [REDACTED]'s retirement benefits would be higher if he remained at his current job; however, regardless of the exact amount of retirement benefits Mr. [REDACTED] would receive or his current and future salary if he remained at his job, there is no evidence that he would suffer hardship in either case or that he would be unable to support himself on his current retirement benefits or that he or his wife would be unable to supplement this by working in the United Kingdom. If Mr. [REDACTED] decides to remain in the United States separated from his wife, he will suffer hardship due to the absence of his spouse, but he will maintain his employment, his familial and community ties, and the health care to which he is accustomed.

Upon review, the applicant has not established that her husband will experience extreme hardship if she is denied a waiver of inadmissibility. The AAO recognizes that, as with any marriage, the applicant's husband

will endure hardship as a result of separation from the applicant should he remain in the United States; and that a move to the United Kingdom will also present difficulties, including the challenge of finding work and the hardship that results from separation from a customary lifestyle and surroundings. However, based on the record, his situation is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility 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 does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most individuals who are deported.

Based on the foregoing, if the applicant is barred from returning to the United States for ten years, pursuant to section 212(a)(9)(B)(i)(II) of the Act, the instances of hardship that will be experienced by her husband, considered in the aggregate, do not rise to the level of extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. See 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.