U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: SAN FRANCISCO Date: OCT 15 2007

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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:

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 waiver application was denied by the District Director, San Francisco, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Tunisia who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more subsequent to April 1, 1997. He 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 remain in the United States with his U.S. citizen spouse.

The record reflects that the applicant was admitted to the United States on September 18, 1998 in B-2 status with a period of authorized stay expiring on March 19, 1999. The applicant and his wife, [redacted], a native of the United States, were married in the United States on January 22, 2002. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf on May 30, 2002. The applicant was granted advance parole on September 26, 2002. The applicant subsequently departed from the United States on an unspecified date. He was paroled back into the United States on December 26, 2002. The Form I-130 petition was approved on January 15, 2003. The applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on May 30, 2002 and an Application for Waiver of Grounds of Inadmissibility (Form I-601) on April 14, 2003.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated February 13, 2004.

On appeal, counsel summarizes the evidence submitted by the applicant and contends that the evidence shows that the applicant's removal would result in "extreme emotional, medical and economical hardship" to his spouse. *Brief of Counsel*, dated October 5, 2004.

The record contains a brief from counsel, declarations by the applicant's spouse dated May 18, 2005 and March 18, 2003 respectively; a psychological evaluation of the applicant's spouse from [redacted] statements from [redacted] friends of the applicant's spouse; statements from siblings and other relatives of the applicant's spouse; articles and reports concerning human rights conditions in Tunisia from the U.S. State Department and Human Rights Watch; medical records for the applicant's spouse; a psychological evaluation of the applicant's spouse from [redacted] dated April 10, 2003; and employment and tax documents for the applicant's spouse. The entire record was considered in rendering a decision on the appeal.

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-
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> . . . .

> (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 . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure of removal, or
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> (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.
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> . . . .
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> (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 [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.

The record reflects that the applicant was admitted to the United States on September 18, 1998 in B-2 status with a period of authorized stay expiring on March 19, 1999. There is no evidence in the record that the applicant applied for and was granted an extension or change of status prior to the expiration of his period of authorized stay. The applicant was granted advance parole on September 26, 2002. The applicant subsequently departed from the United States on an unspecified date. He was paroled back into the United States on December 26, 2002. Thus, the applicant accrued unlawful presence from March 20, 1999 through the date of his departure after September 26, 2002, a period in excess of one year.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse is the only 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; s*ee also Matter of Mendez-Moralez,* 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.

> 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).

The Ninth Circuit Court of Appeals has stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In the brief submitted on appeal, counsel indicates that the evidence shows the following hardship factors:

1. The applicant's spouse suffers from "severe anxiety, depression, and a number of related problems" and her "emotional stability would be severely taxed" if her husband is removed or if she relocates to Tunisia, a society "segregated between male and female."
2. The applicant's spouse suffers from residual uterine leiomyomas and asymptomatic uterine fibroid indicating that there are cysts on her ovaries that require continuing medical attention to assure they are benign, and surgery if they are not. If the applicant's spouse has to leave the United States, she "is not confident that there will be sufficient medical information to indicate that she will receive the same treatment that she has been receiving in the United States."
3. Because of the emotional trauma associated with the possibility of the applicant's removal, the applicant's spouse has been unable to maintain steady employment, and is therefore dependent on the applicant's income and medical insurance.

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 spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant's spouse will suffer emotionally as a result of separation from the applicant if she chooses to remain in the United States. However, the applicant has submitted insufficient evidence showing that any psychological consequences would constitute extreme hardship when considered with other hardship factors. The hardship described by the applicant is the typical result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. 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). 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.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter of [redacted] is based on only two interviews totaling four hours between the applicant's spouse and the psychologist. Likewise, the submitted letter from [redacted] appears to be based on only one interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the current or past disorders suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluations, being based on short interviews, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the findings speculative and diminishing the evaluations' value to a determination of extreme hardship. Furthermore, although both [redacted] provide lengthy explanations of the impact social conditions in Tunisia will have on the applicant's psychological and emotional state, the record does not reflect that either has expertise on the subject of social conditions in that country, and neither indicates the information upon which they relied in reaching their conclusions. The documentation of country conditions in Tunisia submitted by the applicant does not demonstrate with any specificity that the applicant will experience extreme hardship there. There is no evidence in the record showing that medical treatment for the applicant's medical conditions is unavailable in Tunisia.

Likewise, the record contains insufficient evidence showing the extent to which the applicant will suffer financial hardship if the applicant is removed. The applicant has submitted no recent tax, financial or employment records for herself or her husband to substantiate the claim that she is dependent on the applicant financially and on health insurance provided through his employment. The financial documents submitted by the applicant's spouse in support of her Form I-864 Affidavit of Support show that the applicant was employed as a front officer manager of the Warwick Regis Hotel in 2002. Although the statements by the applicant's spouse and others are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan,* 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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 also notes that without documentary evidence to support a claim, the assertions of counsel cannot satisfy an applicant's burden of proof. The unsupported 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 documentation of country conditions in Tunisia submitted by the applicant discusses human rights concerns in that country, but does not demonstrate with any specificity that the applicant would be unable to provide financially for the applicant there or that the applicant and his spouse would be subjected to human rights abuses.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests 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.