U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: NEW YORK, NY Date: DEC 7 2009

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:

[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.

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Poland and a citizen of Uzbekistan 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 admission within ten years of his last departure from the United States. The applicant is the husband of a U.S. citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The district director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to his spouse, [redacted]) and, further, that he did not warrant a favorable exercise of the Secretary's discretion. She denied the waiver application accordingly. *Decision of the District Director,* dated September 11, 2008.

On appeal, counsel for the applicant states that U.S. Citizenship and Immigration Services (USCIS) abused its discretion in denying the waiver application as the applicant submitted compelling and substantial evidence in support of his claim. *Form I-290B, Notice of Appeal or Motion,* dated October 8, 2008.

The evidence of record includes, but is not limited to: counsel's brief; a statement from [redacted]; statements relating to [redacted]'s physical and mental health; tax returns and earnings statements for the applicant and [redacted]; conviction records for the applicant; documentation relating to the applicant's completion of a substance abuse program; country conditions materials relating to Uzbekistan; copies of bank statements and bills for the applicant and [redacted]; and letters of support from friends of the applicant.

Section 212(a)(9)(B) 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.

The record reflects that the applicant entered the United States as a nonimmigrant visitor on June 12, 1996 and that he did not depart the United States when his visa expired on December 8, 1996. The applicant applied for asylum on August 18, 1997, but, on January 14, 1998, requested that his case be closed. His application was terminated as of January 27, 1998.[1] On May 11, 2001, the applicant submitted his first Form I-485, Application to Register Permanent Resident or Adjust Status. In October 2001, the applicant departed the United States with an advance parole, returning in November 2001. In departing the United States, the applicant triggered the unlawful presence provisions of section 212(a)(9)(B) of the Act, which went into effect on April 1, 1997.

The AAO notes that aliens present in the United States in unlawful status do not accrue unlawful presence during the pendancy of asylum or adjustment of status applications.[2] Accordingly, the applicant accrued two periods of unlawful presence prior to his 2001 departure from the United States: from April 1, 1997, the effective date of the unlawful presence provisions, until August 18, 1997, the date on which he applied for asylum, and from January 28, 1998, the day after the applicant's Form I-589 was terminated, until May 11, 2001, the date on which he filed the first of his adjustment of status applications. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within ten years of his 2001 departure from the United States. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(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 resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawful permanent resident spouse and/or parent of the applicant. Hardship that the applicant would experience as a result of his inadmissibility will not be considered in this proceeding, except to the extent that it causes hardship to [redacted], the applicant's qualifying relative.

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[1] The AAO notes that the record also contains a second Form I-589 asylum application, which was received by the legacy U.S. Immigration and Naturalization Service on November 28, 1997 and treated as a duplicate of the applicant's previously filed Form I-589, not a new application.

[2] Section 212(a)(9)(B)(iii)(II) of the Act; Memo. from [redacted], Assoc. Dir., Refugee, Asylum and Int. Ops., [redacted] and Stra., U.S. Citizenship and Immigration Serv., to Field Leadership, *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act* 11 (May 6, 2009).

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 alien 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. 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)].

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 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 aliens being deported.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Uzbekistan or remains in the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will now consider the relevant factors in the adjudication of this case.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to [redacted] in the event that she relocates to Uzbekistan. On appeal, counsel for the applicant states that, as a result of her healthcare needs and safety issues in Uzbekistan, relocation is not an option for [redacted]. Counsel indicates that [redacted] suffers from Toxic Multinodular Goiter (MNG), which could not be successfully treated in Uzbekistan. Counsel further contends that [redacted] requires continued care for her psychiatric condition and, further, that she needs fertility treatment if she and the applicant are to start a family. Counsel also notes that the U.S. Department of State has issued a travel warning regarding Uzbekistan for U.S. citizens.

In support of counsel's claims, the record contains a medical prescription form signed by [redacted] which indicates the applicant's spouse has been diagnosed with Toxic MNG for which she takes medication. Three letters from [redacted] establish that she has undergone fertility treatment, although her subsequent pregnancy resulted in a miscarriage. Two statements from a licensed clinical social worker indicate that [redacted] has been her patient on and off since December 7, 2005. The record also contains a Department of State June 30, 2008 report on Uzbekistan entitled "Country Specific Information," which indicates that a travel warning is in effect for Uzbekistan.[3] This same document also reports that medical care in Uzbekistan is below Western standards, with severe shortages of basic medical supplies; that a large percentage of medication sold in local pharmacies is known to be counterfeit; and that individuals with pre-existing medical problems may be at particular risk due to inadequate medical facilities. After considering the hardship factors presented by counsel, particularly those related to the lack of reliable medication and treatment for [redacted] Toxic MNG in Uzbekistan and the security risk for U.S. citizens as documented by a Department of State travel warning, the AAO finds that the applicant has established that his spouse would suffer extreme hardship if she were to relocate to Uzbekistan.

The second part of the analysis requires the applicant to prove that [redacted] would suffer extreme hardship if she remains in the United States without the applicant. Counsel asserts that if the applicant is removed, [redacted] would experience extensive psychological harm and that her economic independence would also be jeopardized. Counsel's assertions regarding the impact that the applicant's removal would have on his spouse's mental state are supported by two statements from a licensed clinical social worker, [redacted] who indicates that she first saw the applicant's spouse on December 7, 2005 and that [redacted] continued with therapy on a weekly or biweekly basis through April 2006. The primary basis of this therapy, [redacted] states, was [redacted] relationship to the applicant and her adjustment to their marriage. [redacted] also indicates that she saw the applicant's spouse for a second round of therapy from May 2008 until October 2008, during which time they discussed [redacted] unfulfilled desire to have children, as well as her fear that the applicant would be removed from the United States. At that time, [redacted] reports, the applicant's spouse stated that she was unable to relax and always felt unhappy and stressed. Further, [redacted] states that [redacted] during this period expressed "suicidal ideation," stating that she would have nothing to live for in the applicant's absence, but refused pharmacotherapy because she was attempting to conceive. In the first of her statements, [redacted] concludes that the removal of the applicant might cause a severe exacerbation of [redacted] condition and states that suicide cannot be ruled out.

In her second statement, [redacted] reports that [redacted] returned to therapy on April 18, 2009, reporting that she had suffered a miscarriage and was in despair, with her anxiety and depression intensified by her fear that the applicant would be removed. [redacted] again asserted to [redacted] that she would have nothing to live for in the applicant's absence, that she would not live without the applicant. [redacted] states that it is her professional opinion that the potential

[3] The AAO notes that the travel warning for Uzbekistan was reissued on June 16, 2009 and remains in effect as of this date.

removal of the applicant has been a major contributing factor to [redacted] symptoms of depression and anxiety, and may be having an impact on [redacted] ability to conceive.

The AAO acknowledges the emotional hardships created by the applicant's spouse's recent miscarriage and her ongoing concern over the potential removal of the applicant. However, the two brief statements provided by [redacted] are insufficient proof of [redacted] emotional/mental status. Although [redacted] reports that between December 2005 and April 2009, [redacted] has been her patient for a total of approximately 11 months, her evaluation fails to offer the detailed mental health analysis that such an extended period of counseling/therapy could be expected to provide. [redacted] statements, instead, recount [redacted] and the applicant's history, including [redacted] account of her fertility treatment and miscarriage. While [redacted] states that she finds the applicant's spouse to suffer from depression and anxiety, she fails to indicate the nature or severity of [redacted] mental health conditions, their progression over the course of her treatment, or how they currently affect her ability to function. [redacted] also fails to discuss what symptoms or behavior on the part of [redacted] led her to her conclusions or that [redacted] has undergone any psychological testing that would support such conclusions. Absent information to establish the basis on which [redacted] reached her diagnosis and a greater understanding of the nature of the depression and anxiety from which [redacted] states that [redacted] suffers, the AAO finds that her conclusions regarding the applicant's spouse's mental health, including those relating to [redacted] expressions of suidical ideation, are speculative and, therefore, of limited value to a determination of extreme hardship.

Counsel's contends that the deterioration of [redacted] mental status as a result of the applicant's removal would also effectively eradicate the financial independence she currently enjoys and result in severe economic hardship. The AAO notes counsel's assertion, but, as just discussed, does not find the record to contain sufficient evidence to establish the impact of the applicant's removal on his spouse's mental health. Accordingly, it concludes that the applicant has not established that a denial of his waiver application would result in economic hardship for [redacted]r. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. 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).

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection, as well as 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 and, thus, the familial and emotional bonds exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship that meets the standard in section 212(a)(9)(B)(v) of the Act be above and beyond the normal, expected hardship involved in such cases. In the present case, the AAO acknowledges that [redacted] would experience hardship as a result of the applicant's inadmissibility to the United States. It notes, however, that the record

offers no documentary evidence that would distinguish the hardships she would face from those normally experienced by individuals whose spouses reside outside the United States as a result of removal or exclusion. Accordingly, the AAO does not find the applicant to have established that [redacted] would face extreme hardship if his waiver request were to be denied and she remained in the United States.

When considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, the hardships described in the record do not support a finding that [redacted] would face extreme hardship if the applicant is refused admission. Accordingly, the applicant has failed to establish statutory eligibility for a waiver under section 212(a)(9)(B)(v) of the Act. As the applicant is statutorily ineligible for relief under 212(a)(9)(B)(v), no purpose would be served in discussing whether he merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

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.

ORDER: The appeal is dismissed.