U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: VIENNA, AUSTRIA Date: OCT 01 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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Vienna, Austria. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Macedonia 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 readmission within ten years of his last departure from the United States. The applicant is married to a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The Officer in Charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the Officer in Charge,* dated November 6, 2006.

On appeal, counsel asserts that that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant had failed to meet the burden of establishing extreme hardship to his qualifying relative as necessary for a waiver under 212(a)(9)(B)(v) of the Act. *Form I-290B.*

In support of the waiver application, the record includes, but is not limited to, counsel's brief; statements from the applicant's spouse; tax statements for the applicant's spouse; copies of a small claims writ and notice of suit; a cancellation of vehicle registration; and an eviction notice. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

In the present application, the record indicates that the applicant entered the United States without inspection in April 2002 and remained until his departure in December 2003. The applicant accrued unlawful presence from April 2002 until he departed the United States in December 2003. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within ten years of his December 2003 departure from the United States. The applicant is, therefore, inadmissible to the United States 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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of 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 citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant would experience upon removal is not directly relevant to the determination as to whether he is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is found to be inadmissible. If extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Macedonia or 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 consider the relevant factors in adjudication of this case.

If the applicant's spouse joins the applicant in Macedonia, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Passport for the applicant's spouse; Form I-130, Petition for Alien Relative.* Her family lives in the United States. *Attorney's brief; Form G-325A, Biographic Information, for the applicant's spouse.* She speaks only English, does not speak or understand Macedonian, and understands only a few words

of Albanian. *Attorney's brief.* Counsel asserts that the applicant's spouse will not be able to find employment due to her age, lack of employment skills, inability to speak the language, and Macedonia's depressed economy. *Id.* While the AAO acknowledges counsel's assertions, it notes that the record does not include evidence, such as published country conditions reports, documenting the economy and employment opportunities in Macedonia. 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). Nevertheless, the AAO does acknowledge the obstacles in obtaining employment or adjusting to society in a country where one does not speak the language. Counsel also notes that the applicant's spouse suffers from chronic back and leg pain, and has had a minor heart attack. *Attorney's brief.* While the AAO acknowledges these assertions, it notes that the record does not include documentation from a licensed healthcare professional to establish these conditions. Nevertheless, when looking at the aforementioned factors, particularly the applicant's spouse's lack of familial and cultural ties to the Macedonia, as well as her inability to speak the native language, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Macedonia.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in the United States and her family resides in the United States. *Passport for the applicant's spouse; Form I-130, Petition for Alien Relative*; *Attorney's brief*; *Form G-325A, Biographic Information, for the applicant's spouse.* The applicant's spouse notes that her life would be less stressed financially if she were not separated from the applicant. *Statement from the applicant's spouse*, dated March 22, 2006. The record includes a tax statement for the applicant's spouse showing that in 2005 she earned $15,221.00. *Tax statement for the applicant's spouse.* The record also includes a nonpayment of rent notice for July 2006, August 2006 and September 2006 for the applicant's spouse. *Notice to Quit Possession.* In addition to the eviction notice, the record also includes a cancellation of car registration and documents a lawsuit against the applicant's spouse for not paying a medical bill. *Eviction notice; cancellation of vehicle registration; and Notice of Suit.* While the AAO acknowledges these financial difficulties as documented in the record, it notes that financial hardship alone does not establish extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). Furthermore, although counsel claims that the applicant has lost his business in Macedonia, the record does not offer documentary evidence that the applicant could not financially assist his spouse from outside the United States and thereby improve her financial circumstances. Counsel also asserts that the children of the applicant's spouse continue to need her financial help. However, the record fails to document that the applicant's spouse has children or that they receive financial assistance from her. Counsel further notes that the applicant's spouse suffers from chronic back and leg problems, and that she has had a minor hear attack. *Attorney's brief.* There is no documentation in the record from a licensed healthcare professional to support such assertions, nor is there any indication that the applicant's spouse requires the applicant's assistance to address whatever health problems she may have. As previously noted, 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 applicant's spouse states that having the applicant with her would make a tremendous difference in the quality of her life. *Statement from the applicant's spouse*, dated July 24, 2006. The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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 hardship experienced by the families of most aliens being removed. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

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(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.