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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MIAMI, FL Date: DEC 31 2007

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality 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 Acting District Director, Miami, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, born in Palestine (now part of the Israeli Occupied Territories), initially entered the United States as a visitor on January 12, 1994, with authorization to remain until July 11, 1994. The applicant remained in the United States beyond July 11, 1994 without authorization. He subsequently departed and reentered the United States with advance parole authorization on July 28, 2000. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until his departure in May 2000. The applicant 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. The applicant seeks a waiver of inadmissibility in order to remain with his U.S. citizen spouse in the United States.

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director,* dated July 6, 2005.

In support of the appeal, counsel submits a brief, dated August 5, 2005; numerous bank statements and tax returns related to the applicant and his spouse; and a copy of a letter from a licensed clinical social worker in regards to the applicant's spouse, dated May 11, 2001. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) 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…

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Extreme hardship to the applicant is not a permissible consideration under the statute. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant or his extended family members, including his two U.S. citizen cousins, cannot be considered, except as it may affect the applicant's spouse.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include 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.

> 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).

Counsel first asserts that the applicant's spouse would experience emotional and psychological hardship were the applicant removed from the United States. As stated by the applicant's spouse "...Without my husband, I will absolutely suffer great mental anguish, anxiety, loss of society, loss of consortium, and extreme hardship with every aspect of my life. I will not be able to live without my husband by my side in the US...Emotionally, I am already suffering from severe depression and anxiety and there is no way of knowing for sure the impact the separation caused by my husband's three or ten-year penalty of inadmissibility will have on me. I would be subjected to severe mental stress and depression...I...have experienced many losses and traumas in my lifetime of 23 years of age going onto 24 years in July of this year. At birth, I was abandoned by my biological father. My mother abandoned me as well at age 5. My stepfather who was physically abusive raised me. Due to such a physically abusive relationship with my stepfather, I was consequently placed in many different foster homes and safe shelters. At age 17, I found myself again in a physical abusive relationship. Consequently, I lost my baby 4 ½ months into my pregnancy. In 1998, my best friend was killed in an automobile accident. I attempted to commit suicide and was placed in a mental hospital. Today, I still feel very vulnerable and suffer from clinical depression due to my many previous losses..." *Affidavit of Extreme Hardship from* [redacted], dated April 1, 2003.

In support of the applicant's spouse's statements, a letter was provided by [redacted], LCSW. Ms. [redacted] states that "...Due to Mrs. [redacted] diagnosis of Clinical Depression, history of suicide ideation/attempt and losses/trauma, this therapist documents great concern for her emotional state should her husband be removed from her life and deported..." *Letter from* [redacted] *LCSW,* dated May 11, 2001.

The letter from the licensed clinical social worker, written four years prior to the filing of the appeal in August 2005, does not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the social worker's findings speculative and diminishing the letter's value to a determination of extreme hardship. Moreover, although the social worker references that the applicant's spouse has been diagnosed with Clinical Depression, the social worker makes no recommendations for the applicant's spouse's continued care, such as regular therapy sessions or other treatment, and/or medications, to further support the gravity of the situation. Finally, despite the assertions made by the applicant's spouse regarding her diagnosed depression and her past psychological issues, no documentary evidence is provided by a licensed physician or mental health expert who has been treating the applicant on a regular basis, to verify the applicant's spouse current mental state and the short and long-term treatment plan for her conditions. 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 applicant's spouse's affidavit establishes that the applicant has a very loving and devoted spouse who is extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of 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 current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section (a)(9)(B)(v) of the INA, be above and beyond the normal, expected hardship involved in such cases.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States, is typical to individuals separated as a result of removal 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 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.

Moreover, counsel states that the applicant's spouse will suffer financial hardship if the applicant were removed from the United States. As stated by counsel, the applicant's spouse "...would suffer extreme

hardship in the sense that her husband [the applicant] will not be able to make enough income to support both of them..." *Brief in Support,* dated August 5, 2005.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS,* 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

Counsel has not provided any documentation that explains why the applicant's spouse is unable to support herself by obtaining employment in the United States were the applicant removed. Moreover, it has not been established that the applicant would not be able to obtain employment were he to relocate abroad, thereby assisting the applicant's spouse financially. Although the applicant's spouse may need to make alternate arrangements with respect to her financial and academic situation, it has not been established that such arrangements would cause her extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant based on the denial of the applicant's waiver request. In this case, the applicant's spouse states "...living in Palestine is living in a war zone....I do not speak the language, I would not be able to find a job because I don't speak the language and I am not from there, I may feel discrimination about being an American in a foreign country, and I would not be able to speak to my child in his first language abroad. The medical services overseas are not comparable to the quality of medical care in the U.S. and if there were any reason for me or my husband, or god-forbid, our child were to be hospitalized, I would be forced by U.S. Immigration to suffer an inferior medical system..." *Supra* at 1. Articles about country conditions and human rights in Israel and the Occupied Territories were provided. Based on the concerns outlined above by the applicant's spouse and the documentation provided in support of the appeal, the AAO concludes that the applicant's spouse would face hardship beyond that normally expected of one facing relocation abroad based on the removal of a spouse. As such, the applicant's spouse would experience extreme hardship if she accompanied the applicant abroad, though, as noted above, not if she were to remain in the United States.

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 he were removed from the United States. Having found the applicant statutorily ineligible for relief, 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 under section 212(a)(9)(B)(v) of the Act, 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.