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

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[redacted]

FILE: [redacted] Office: ROME, ITALY Date: MAR 27 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, 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, Rome, Italy. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 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 10 years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 reside in the United States with his United States citizen wife.

The Acting District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated February 28, 2005.

On appeal, the applicant, through counsel, asserts that the decision denying the applicant's Form I-601 was "in error both factually and legally." *Form I-290B*, filed March 25, 2005.

The record includes, but is not limited to, counsel's brief, an affidavit from the applicant's spouse, statements by the applicant's mother-in-law and father-in-law, and a psychological evaluation by [redacted]. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
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> (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
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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.
>
> ...
>
> (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 on a B2 nonimmigrant visa on August 17, 2000, with authorization to stay until February 18, 2001. The applicant departed the United States on March 16, 2004. On May 7, 2004, the applicant and [redacted] married in Carthage, Tunisia. On May 13, 2004, [redacted] filed a Petition for Alien Relative (Form I-130) for the applicant, which was approved. On June 17, 2004, the applicant filed an Application for Immigrant Visa and Alien Registration (Form DS-230), which was denied. On October 15, 2004, the applicant filed a Form I-601. On February 28, 2005, the Acting District Director denied the applicant's Form I-601, finding that the applicant accrued more than three years of unlawful presence and he failed to demonstrate extreme hardship to his United States citizen spouse. Additionally, the Acting District Director noted that the applicant was employed in the United States without authorization for two years and three months. The applicant is attempting to seek admission into the United States within 10 years of his March 16, 2004 departure from the United States. The applicant is, therefore, 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.

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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon deportation is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. Once 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).

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.

Counsel asserts that the applicant's spouse would face extreme hardship if she relocated to Tunisia in order to remain with the applicant. The applicant's wife claims she would like to start a family, but fears that she "would not be able to receive or even afford...medical care in Tunisia." *Affidavit of* [redacted] page 3, dated April 18, 2005. She states "[s]hould [she] become pregnant [she] would need to be constantly monitored due to hyper or hypertensive problems that could lead to serious complications for [herself] and [her] baby." *Id.* She claims that she and the applicant "would have no life in Tunisia. To move to Tunisia in order to live with [her] husband would result in [her] unemployment proving to be financially disastrous for the family, as well as to [her] health." *Id.* The applicant's wife additionally is "terrified of living in an Islamic state as a non-Muslim American married to a Muslim. [She] has read about terrorist threats and human rights abuses in Tunisia, as well as the rise of Muslim extremists in the region. The thought of living in a place with no prospect of employment and the possibility of being kidnapped and killed by political terrorist [sic] has caused [her] untold endless anxiety." *Id.* at 4. The AAO notes that in a January 18, 2005

letter by the applicant's wife, she states that if the applicant "is refused this waiver...the only alternative would be for [her] to move to Tunisia." *Letter by* [redacted] filed January 18, 2005. Counsel cites the poor economic conditions and general instability in Tunisia as further reasons that the applicant's wife cannot live there. *Id.* at 4. The AAO notes that the applicant failed to provide any evidence that his wife could not obtain a job in Tunisia. Counsel states the applicant's wife "does not speak Arabic [or] French," would hinder her efforts to find employment in Tunisia. However, there is no evidence that the applicant's wife could not learn Arabic and/or French. The AAO finds that the applicant failed to establish that his wife would face extreme hardship if she joined her husband in Tunisia.

In addition, counsel does not establish extreme hardship to the applicant's spouse if she remains in the United States, maintaining her employment in her family's business and close proximity to her family. The applicant's wife is employed in her father's framing shop, and she states she has a very close family, and is currently residing with her mother and brother. *Affidavit of* [redacted], *supra* at page 3. As a United States citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that the applicant and his wife have never lived together as husband-and-wife, and have only spent a few weeks together since the applicant's departure on March 16, 2004. No documentation was submitted to indicate that the applicant's spouse has experienced financial hardship as a result of the separation from the applicant, and there is no evidence that the applicant has ever contributed financially to his wife. Counsel asserts that the applicant's wife's "diagnosed emotional and psychological condition, amount to 'extreme hardship' caused by the enforced separation from her husband." *See Brief in Support of Appeal*, page 5, dated April 18, 2005. [redacted] found the applicant's wife is expressing symptoms of a recurrent Anxiety Disorder, Panic Disorder, and Major Depressive Disorder. *See Psychological Evaluation by* [redacted] pages 2-3, dated March 31, 2005. [redacted] expresses concern in that the applicant's wife "is presenting neurological symptoms...and she should see a physician as soon as possible." *Id.* at 3. [redacted] reports that the applicant's wife "was diagnosed with an anxiety disorder" when she was sixteen years old, and she "was in therapy for six months and seemed to get better." *Id.* at 2. However, there was no evidence submitted demonstrating this prior psychological condition. [redacted] additionally reports that the applicant's wife has " migraines, which she has a history of, and is being treated for. Her migraines can last for days, especially during times of stress. She also reported that she has been experiencing a lot of dizziness and some loss of her vision...[and] high blood pressure." *Id.* The AAO notes that no evidence was submitted on the applicant's wife's prior and present medical conditions. In addition, there was no mention of the applicant's wife's medical conditions in any of the affidavits submitted by the applicant, his wife, or her family. The only evidence submitted regarding the applicant's wife's previous and present medical and psychological conditions is the one psychological evaluation by [redacted] which appears to have been prepared for the appeal. The AAO finds that the hardships noted by counsel do not rise to the level of extreme hardship as required by the act.

The applicant's wife faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour,* 11 I&N Dec. 306, 307 (BIA 1965). Further, beyond generalized assertions regarding country conditions in Tunisia, the record fails to demonstrate that the applicant will be unable to contribute to his

wife's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981).

Although the AAO is not insensitive to the applicant's situation, the financial strain of visiting the applicant in Tunisia and the emotional hardship of separation, including the applicant's wife's psychological and emotional problems, are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's wife will endure, and has endured, 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.

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra,* the Ninth Circuit Court of Appeals 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to 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.