U.S. Department of Homeland Security
20 Mass. Ave. N.W., Rm. 3000
Washington, DC 20529

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

H3

[redacted]

FILE: [redacted] Office: ROME, ITALY Date: MAR 30 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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Regional Immigration Attache, Rome, Italy, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant, [redacted], is a native and citizen of Israel 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. [redacted] a U.S. citizen, is the husband of the applicant. 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). The regional immigration attache found the applicant failed to establish eligibility for a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and denied the application, accordingly.

In the Form I-290B, counsel states that the applicant's husband is undergoing a psychological assessment to document the impact of the separation to this mental health. Counsel states that the hardships that the applicant's husband described in the waiver application, combined with the extreme psychological impact, is sufficient to warrant approval of the application.

The entire record has been reviewed in rendering this decision. It is noted that although counsel indicates in the Form I-290B that a brief and/or evidence will be sent to the AAO within 30 days, there is no such evidence in the record. Counsel did not respond to a facsimile from the AAO on February 28, 2007 requesting a copy of the brief or evidence. The record as constituted is therefore complete.

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). Exceptions and tolling for good cause are set forth in sections 212(a)(9)(B)(iii) and (iv) of the Act, 8 U.S.C. § 1182(a)(9)(B)(iii) and (iv), respectively. The periods of unlawful presence under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(II), are not counted in the aggregate. Each period of unlawful presence in the United States is counted separately for purposes of section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(II).[1] For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.[2] The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United

[1] Memo, Virtue, Acting Assoc. Comm. INS, *Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence* (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998).

[2] DOS Cable, *supra.*; and *IIRIRA Wire #26, HQIRT 50/5.12.*

return on an advance parole will trigger the three- and ten-year bar. Memo, Virtue, Acting Exec. Comm., INS, HQ IRT 50/5.12, 96 Act. 068 (Nov. 26, 1997).

The regional immigration attache correctly found that the applicant was unlawfully present in the United States for more than one year. She entered the United States in December 1999 as a temporary visitor with authorization to stay until June 23, 2000. She voluntarily departed in April 2003, having accrued over year of unlawful presence. It is clear that the applicant accrued more than one year of unlawful presence in the United States from June 24, 2000 to April 2003, at which time she voluntarily departed from the country, triggering the ten-year bar. Thus, the regional immigration attache correctly found her 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 more than one year. *Decision of the Regional Immigration Attache,* dated May 9, 2005.

The regional immigration attache found the applicant failed to establish eligibility for a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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 –

(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 Secretary, 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 applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v). A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 is not a permissible consideration under the statute and will be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse, [redacted], is the only qualifying relative here. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; *see also Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N

Dec. 560, 564 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors that it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 564. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

U. S. courts have 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 from one's spouse will therefore be given appropriate weight in evaluating the hardship factors in the present case.

The AAO will now apply the *Cervantes-Gonzalez* factors to the present case to the extent they are pertinent in determining extreme hardship to [redacted] It is noted that extreme hardship to [redacted] must be established in the event that he joins the applicant to live in Mexico; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record indicates that the applicant and her husband married on June 15, 2001 in the United States. The record contains an undated letter signed by [redacted] In the letter, [redacted] makes the following statements. He had lived in Israel for nine months and found living there difficult. Living in Israel, he is away from his family and friends, and finds everything is different and hard. He does not understand the language spoken in Israel. He cannot find work there and his wife works very hard. He never knew people could live with bombings and high security in stores and other places in Israel. Although he had sometimes worked two jobs in the United States, they could get everything they needed and wanted. In Israel, they can barely get by on his wife's earnings. He cannot afford to travel to the United States, even though he needed to attend family matters there. He is being forced to choose between his family in the United States and life with his wife in Israel. He would like to return to the United States with his wife and got to school and learn a profession. He would like to

support his wife, who he loves. He cannot imagine staying in Israel, but he will if his wife is not permitted to come to the United States.

The applicant makes the following statements in an undated letter, which is contained in the record. She loves her husband. In Israel, she barely earns enough money to get by. In the United States, they always had money. She would like to attend business school and her husband wants to learn arts and graphics. She wants to start a family. Her husband is far away from his family, friends, and everything he knows. He will have to learn the language spoken in Israel, which is very hard to do and is expensive; it will be very difficult for him to get a job in Israel. Her husband is scared because of the security problems.

If [redacted] is separated from his wife, he living in the United States and she living in Israel, it is clear from the record that he will endure emotional hardship as a result of such a separation. The AAO is not unmindful or unsympathetic to the emotional turmoil caused by separation from a loved one. However, it finds that [redacted] situation, if he decides to live in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship as required by 212(a)(9)(B)(v). In *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991) the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS,* 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In addition, the Ninth Circuit in *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. The record before the AAO is insufficient to establish that the emotional hardship endured by [redacted] is unusual or beyond that which is normally to be expected upon deportation.

[redacted] has not shown that he will endure economic hardship if his wife's waiver is not granted and he lives in the United States. The W-2 Forms in the record reflect that he was gainfully employed while living in the United States, and the 2002 Form 1040EZ indicates that he earned $18,201. Thus, the record does not demonstrate that [redacted] will experience economic hardship if his wife's waiver is not granted.

The evidence is insufficient to establish that [redacted] will experience extreme hardship if he lives with his wife in Israel. Although [redacted] has asserted that he and his wife are in economic straits living in Israel, there is no evidence in the record corroborating their financial hardship, such as household expenses, earning statements, etc. Some U.S. courts have held that economic hardship alone may be sufficient to establish extreme hardship where there is complete inability to find work. *See, e.g., Urban v. INS*, 123 F.3d 644, 648 (7th Cir. 1997) and *Carrette-Michel v. INS*, 749 F.2d 490(8th Cir. 1984)(economic hardship may be sufficient where there is complete inability to find work). No evidence has been provided of [redacted] complete inability to find employment in Israel as a result of economic, cultural, or political conditions in Israel. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). It is noted that in *INS v. Jong Ha Wang,* 450 U.S. 139, 144 (1981), the U.S. Supreme Court found that economic detriment alone is insufficient to establish extreme hardship. It is only when other factors such as advanced age, illness, family ties, etc. combine with economic

detriment that deportation becomes an extreme hardship. *Matter of Anderson,* 16 I&N Dec. 596, 598 (BIA 1978).

[redacted] does not have family residing in Israel. He indicates that he does not have the financial means to travel to the United States to be with his mother. However, as previously stated, in *Hassan, supra,* the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS,* 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). Furthermore, in *Perez, supra,* the common results of deportation were found insufficient to prove extreme hardship and the appeals court defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. The record is insufficient to demonstrate AAO that the emotional hardship endured by [redacted] if he lives in Israel and therefore separated from his family and friends in the United States is unusual or beyond that which is normally to be expected upon deportation.

Having fully weighed the factors mentioned above, both individually and in the aggregate, it is concluded that the factors do not, in this case, constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met that burden.

ORDER: The appeal is denied.