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

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: AUG 0 5 2008

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Excludability 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 Director, California Service Center, denied the Form I-601, Application for Waiver of Ground of Excludability under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v). 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 29-year-old native and citizen of Egypt who was found 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 for more than one year. The applicant entered the United States as a B-2 visitor in 1989 and overstayed her visa. She triggered the unlawful presence bar when she departed the United States in January 2003. In May 2003, the applicant was married to [redacted], a 42-year-old U.S. citizen. The couple had a son in 2004, and was expecting a second child. The applicant now seeks a waiver of inadmissibility in order to remain in the United States and adjust her status to lawful permanent resident on the basis of an approved Petition for Alien Relative filed by her husband on her behalf.

The director found the applicant to be inadmissible and denied her waiver application. The director determined that the applicant had failed to establish that her spouse would face extreme hardship should the waiver be denied.

On appeal, the applicant, through counsel, maintains that her husband would face extreme hardship should the waiver of inadmissibility be denied. Counsel states that the applicant was not advised of the consequences of departing the United States by her previous representative. The appeal is accompanied by a report prepared by Edward Bentsianov, LCSW.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .
> >
> > (I) has been unlawfully present in the United States for a period of more than 180 days but less than 1 years, voluntarily departed the United States ... and again seeks admission within 3 years of the date of such alien's departure . . . is inadmissible.
> >
> > (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 indicates, and the applicant does not dispute, that the applicant was unlawfully present in the United States for a period of more than one year. The applicant began accruing unlawful presence on April 1, 1997 (the effective date of the Illegal Immigration and Immigrant Responsibility Act of 1996). The unlawful presence bar was triggered by the applicant's departure from the United States in 2003. The director's finding of inadmissibility is therefore affirmed. The question remains whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v).

A waiver under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship to the applicant herself or the applicant's children are not permissible considerations under the statute.

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. 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).

In support of her claim, the applicant submitted, in relevant part, a statement from her spouse and a report prepared by [redacted]. The applicant maintains that her spouse would face extreme emotional hardship should the waiver be denied. Specifically, the AAO notes the statements in [redacted] report regarding the applicant's and her spouse's history and emotional condition. The AAO notes that Mr. [redacted] reports that the applicant's mother resides in New York, and that her mother-in-law resides with the couple. The AAO further notes that, according to the report, the applicant's father and brother reside in Egypt. The AAO notes that although [redacted] relates the traumatic events in the applicant's spouse's past, in conclusory fashion, there is no evidence in his report (or elsewhere in the record) that the applicant's spouse suffers from any mental or other health conditions. The AAO notes that the tax documentation in the record indicates that the applicant's spouse is not dependent on the applicant for financial support.

A careful review of the record in its entirety reflects that the applicant's spouse would face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties faced by any other individual in her circumstances. 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); *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO notes the applicant's spouse's reluctance to relocate to Egypt. The applicant's spouse, as a U.S. citizen, is not required to relocate. The AAO finds that the applicant's spouse would face no greater hardship than any other individual in his circumstances should he relocate to Egypt. *SeeRamirez-Durazo v. INS,* 794 F.2d 491, 499 (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").

While the AAO has carefully considered the impact of separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. *See Shooshtary v. INS,* 39 F.3d 1049 (9th Cir. 1994) (stating that "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"). In this case, the record does not contain evidence to show that the hardship faced by the applicant's spouse due to the separation from the applicant rises to the level of extreme. The AAO finds that the circumstances facing the applicant's spouse occur anytime a couple is separated and do not rise to the level of "extreme" either individually, or in the aggregate.

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

In proceedings for application for waiver of grounds of inadmissibility under section 212 of the Act, the burden of proving eligibility rests 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.