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

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[redacted]

FILE: [redacted] Office: PHILADELPHIA, PA Date: FEB 25 2008

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, Philadelphia, Pennsylvania. 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 the Republic of Georgia 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 her last departure from the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The interim district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse and the application was denied accordingly. *Decision of the Interim District Director,* dated May 13, 2004.

On appeal, prior counsel asserts that the applicant's spouse would suffer extreme hardship due to separation, loss of care in regard to his health and financial strain. *Brief in Support of Appeal*, at 2, dated May 28, 2004.

The record includes, but is not limited to, the applicant's spouse's statement, prior counsel's brief and a medical letter for the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States on a visitor's visa on March 10, 1999, her visitor status expired on September 9, 1999, she filed an adjustment of status application on November 28, 2001, and she departed the United States with an advance parole document on or about August 7, 2003. The applicant accrued unlawful presence from September 9, 1999, the date her authorized period of stay expired, until November 28, 2001, the date she filed her application to adjust status. Therefore, the applicant is 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 and seeking readmission within ten years of her 2003 departure.

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.

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 U.S. citizen or lawfully resident spouse or parent of the applicant. 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).

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 are relevant in section 212(a)(9)(B)(v) waiver proceedings and include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. Extreme hardship to the applicant's spouse must be established in the event that he relocates to the Republic of Georgia or in the event that he remains in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to the Republic of Georgia. Prior counsel states that the economic conditions in Georgia are severely depressed and finding employment in Georgia is difficult. *Brief in Support of Appeal*, at 3. The record does not include substantiating evidence of these claims. 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).

In regard to family ties, prior counsel states that the applicant's spouse has two children. *Brief in Support of Appeal*, at 3. There is no indication that the applicant's spouse has any ties to the Republic of Georgia, other than the applicant. The AAO notes that the record does not include evidence of any other factors from *Matter of Cervantes-Gonzalez* or of other relevant hardship factors. After a thorough review of the record, the AAO finds that insufficient evidence has been submitted to establish that the applicant's spouse would suffer extreme hardship if he were to relocate to the Republic of Georgia.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse states that the applicant is his wife, caregiver, friend, the love of his life and companion. *Statements of Applicant's Spouse*, dated March 26 and June 11, 2004. The applicant's spouse states that he cannot drive himself anymore, the applicant takes him to see the doctor and she helps him get dressed. *Statement of Applicant's Spouse*, dated June 11, 2004. Prior counsel states that the applicant's spouse is seriously ill, requires surgery, requires the applicant's necessary care at home, and his recovery could fail without the applicant's care and devotion. *Brief in Support of Appeal*, at 2. Prior counsel states that the applicant's spouse's bad back restricts his daily activities, he depends on the applicant to ensure he takes his medicines and follows his doctor's instructions, the applicant has nursing experience, the applicant is the only person who would care for him, and professional health care would not substitute for his emotional connection to the applicant and would drain his financial resources. *Id.* at 3. Prior counsel states that the applicant's spouse's two children require his financial assistance and the applicant contributes to the household expenses. *Id.* The physician's assistant caring for the applicant's spouse describes the applicant's spouse's serious back and hip problems, states that the applicant's spouse has surgery pending and states that without the applicant's care and devotion, her spouse could fail in his overall recovery process. *Letter from* [redacted], *P.A.*, dated February 25, 2004. The record reflects that the applicant is 73 years old. *Form I-130*, received January 4, 2007.

Based on the applicant's spouse's age, medical problems and total dependence on the applicant, the AAO finds that extreme hardship has been established in the event that the applicant's spouse remains in the United States.

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 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 she 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.