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U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MOSCOW Date: MAY 0 1 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (INA), 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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Acting Officer in Charge (AOIC), Moscow, denied the instant waiver application. 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 the Republic of Georgia, the spouse of a U.S. citizen, the father of a U.S. citizen daughter, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(9)(B)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(9)(B)(i). The applicant seeks a waiver of inadmissibility in order to remain in the United States with his wife and her children, which include his own daughter and a stepdaughter.

The AOIC found that the applicant had been unlawfully present in the United States for more than a year and is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The AOIC also found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application. The AOIC also noted that, if the applicant had demonstrated extreme hardship, his application might still be denied based on other adverse factors in the record, in addition to the applicant's unlawful presence. More specifically, the AOIC noted that the applicant has a history of two arrests.

On appeal, counsel argued that the evidence demonstrates that failure to approve the waiver application in this matter would cause extreme hardship to the applicant's wife. He also argued that the factors adverse to granting the waiver application are insufficient to overcome that extreme hardship. Although counsel did not appear to contest the AOIC's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(9)(B)(i) of the Act provides:

> Any alien (other than an alien lawfully admitted for permanent residence) who –
>
> > (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or
> >
> > (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.

On a Form G-325A that the applicant signed on March 12, 2003 and on a DS-230 Application for Immigrant Visa and Alien Registration that the applicant signed on February 1, 2005, the applicant stated that he had lived in Washington State from September 1998 to October 1999, and in Oregon

from October 1999 through May 2002, when he went to Tbilisi, in the Republic of Georgia. The Form I-601 confirms that the applicant lived in Washington State from September 1998 to October 1999 and in Oregon from October 1999 to May 2002, and that, when the applicant's wife signed that application on June 11, 2006, he was in the Republic of Georgia.

In the brief on appeal, counsel stated that the applicant entered the United States on September 12, 1998 as a B-1 visitor for business with permission to remain in the United States until October 11, 1998. The record contains no evidence that the applicant ever received, or even applied for, an extension of that visa, and no indication that, after October 11, 1998, he was ever accorded any legal status in the United States.

The evidence in the record is sufficient to show that the applicant was unlawfully present in the United States from October 12, 1998 until May 2002, a period greater than a year, and that he has since left the United States. The applicant is therefore inadmissible pursuant to section 212(a)(9)(B)(i) of the Act. The remainder of this decision will address whether waiver of the applicant's inadmissibility is available, and, if so, whether waiver of inadmissibility should be granted.

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

> The Attorney General [now Secretary of Homeland Security] 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 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 waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act 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, his daughter, or his stepdaughter is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

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 nonexclusive list of 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).

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 a letter dated June 11, 2006, the applicant's wife stated that she has two children, the younger of whom is the applicant's child, and the older of whom believes that she is, and that they are growing up without the applicant. She did not explicitly state how this was causing her any hardship.

The letter contains a handwritten letter from the applicant's wife's older child, whom the applicant's wife stated believes that the applicant is her father. She stated that she misses the applicant very much and wants him to return to the United States. That letter does not directly address any hardship this may occasion to her mother, the applicant's wife.

The record contains a letter, dated January 14, 2007, from the pastor at the applicant's wife's church. He stated that when he asked the applicant's wife how she planned to live without the applicant, the applicant's wife stated, "I will fly to [the Republic of] Georgia to be with my husband." The pastor noted that the government of the Republic of Georgia supports the Georgian Orthodox religion, that members of that faith would be displeased to see more people of the applicant's wife's faith in their country, and that her plan might require leaving her children. The pastor did not otherwise address how failure to grant the waiver application would occasion hardship to the applicant's wife.

The record contains a letter, dated February 9, 2007, from the applicant's mother-in-law. The body of that letter, in its entirety, states,

> My name is and I am the mother of [the applicant's wife]. My husband [redacted] and I currently help [the applicant's wife] raise her two daughters. If [the applicant's wife] moves to the Republic of Georgia to be reunited with [the applicant], [redacted] and I will live and take care of [the applicant's wife's daughters, one of whom is also the applicant's daughter].

That letter does not otherwise allege that denial of the waiver application would result in any hardship to the applicant's wife.

The letter contains a declaration, dated February 18, 2007, from the applicant's wife. She stated that her daughters miss the applicant and withstanding their grief is difficult. She further stated that her business takes up almost all of the time that her daughters are awake, and as a result she sees them very little. She also stated that her parents care for her daughters while she is at work. The application's wife stated that she owes a mortgage on her house and a debt on her car, and that her business is failing. She states that the applicant would be able to assist her financially if he returned to the United States, indicating that he has a university degree in construction and worked in a stock market business for over ten years. As to her health, the applicant's wife stated that she has severe arthritis, with accompanying pain that makes sleeping difficult. She stated that she has a weakened immune system, has suffered from pneumonia numerous times, is unable to stand or work for extended periods, suffers from migraine headaches, has almost no vision in her left eye, and is constantly depressed because of her separation from her husband.

The applicant's wife listed various factors that would occasion severe hardship to her if she went to live in the Republic of Georgia. She stated that she would be separated from her daughters, her parents, and her brothers, that she would be unable to obtain proper medical care, that she would be unable to find gainful employment because of the state of her health, that she would not be accepted in the community because of her religion, that she does not speak Georgian and knows little about the culture, that she would fear for her life because she is Russian and there is considerable conflict between Georgians and Russians, and that she would be separated from her life in the United States.

The applicant's wife rejected the possibility of staying in the United States, stating that she loves the applicant and would not be able to live without him.

In support of her medical claims, the applicant's wife submitted (1) two pages of results from blood work from samples taken December 12, 2006; (2) a letter, dated December 21, 2006, from [redacted] a doctor of internal medicine, (3) a letter, dated January 11, 2007 from [redacted] an optometrist, and (4) patient instructions from Gulf Coast Urgent Care, an urgent care clinic in Venice, Florida.

In his December 21, 2006 letter, stated that the applicant's wife has cervical radiculopathy, neuralgia, and chronic rheumatoid arthritis involving her lungs. He also stated that the applicant's wife has a poor immune response because of having rheumatoid arthritis for 15 years, resulting in frequent pneumonia. The doctor stated that the applicant's wife would require pain medication, steroid treatments, and additional blood work.

The optometrist's January 11, 2007 letter states that she performed a complete eye examination on the applicant's wife on January 8, 2007. The applicant's wife complained of poor distance vision, exacerbated during rain or darkness, and of headaches. The optometrist found that the applicant's wife had poor vision and needed a new eyeglass prescription.

The patient care instructions from Gulf Coast Urgent Care show that the applicant's wife was seen for her rheumatoid arthritis, depression, and anxiety, and had been prescribed an anti-inflammatory pain medicine, apparently for her arthritis; and a benzodiazepine and serotonin reuptake inhibitor,

both apparently for her depression. A prescription for Celebrex, an anti-inflammatory pain reliever, was submitted with those instructions, apparently indicating that the applicant's wife did not have that prescription filled.

The applicant's wife asserted that she is in debt, her business is failing, and that she needs the applicant, who has a college degree in construction, to return to the United States to assist her financially.

The applicant was in the United States from 1998 through 2002. The record, however, contains no Form W-2, Wage and Tax Statements; no pay statements, and no indication that he filed income tax returns. Further, when asked, on his Form DS-230, which he signed on February 1, 2005, to list all of his employment during the past ten years, the applicant listed two jobs he held in the Republic of Georgia, and none that he had held in the United States. The record contains no indication that the applicant was ever employed in the United States.

The applicant's wife stated that the applicant "has worked in a stock market business for over 10 years," and "has a university degree in construction from the Republic of Georgia. The record contains no support for the assertion that the applicant worked in stocks for ten years, or for any other period of time. Further, although the applicant claimed, on the Form DS-230, to have a four-year diploma in construction, it appears to have been preceded by only eight years of primary and secondary school. As such, that the applicant's construction degree is equivalent to a college or university degree, rather than a high school degree with some training in construction, for instance, is unclear. No evidence was presented pertinent to that issue other than the applicant's wife's conclusory statement. The record also contains no indication that the applicant's degree or his services are in demand in the United States.

Thus, it has not been demonstrated that the applicant would be able to provide financial support for his spouse if he were in the United States, the amount of support he might provide, or that he is unable to provide similar support from outside the United States.

The applicant's wife has provided a formidable list of ailments. The record demonstrates that the she has arthritis, for which she has been prescribed anti-inflammatory painkillers, although on at least one occasion she seems not to have had the prescription filled. Her weakened immune system has caused her to have pneumonia an unstated number of times. She has very poor vision in one eye and suffers from migraine headaches. She also has cervical radiculopathy, a dysfunction of a nerve in the cervical portion of the spine, and suffers from neuralgia, perhaps as a result of that dysfunction. The record contains no evidence, however, to show that any of those ailments were occasioned by the applicant's absence, or that his presence in the future would alleviate them, or that, in any other way, because of those ailments, failure to grant waiver would result in extreme hardship to the applicant's wife.

The record shows that the applicant's wife was seen on one occasion at an urgent care clinic for her arthritis and, in addition, complaining of depression and anxiety. The clinician prescribed a serotonin reuptake inhibitor and a benzodiazepine, but did not comment on the severity of those

conditions or suggest that the applicant's absence was the cause of the applicant's wife's reported depression and anxiety or that his return would assist in a cure.

Although the input of any medical professional is respected and valuable, the AAO notes that the submitted report is based on a single interview between the applicant's wife and the clinician. The clinician did not report an ongoing relationship with the applicant's wife or any history of treatment for the disorders she suffers other than those two prescriptions. Moreover, the conclusions reached in the submitted report, being based on a single self-reporting interview, do not reflect the insight and elaboration commensurate with an established professional relationship. Further still, they do not indicate that the applicant's absence is in any way connected to his wife's anxiety and depression. The evidence in the record is insufficient to indicate that, because of the applicant's wife's anxiety and depression, failure to approve the waiver application will cause her extreme hardship.

The applicant's wife provided a long list of difficulties she would face if she joined the applicant in the Republic of Georgia but rejected the possibility of remaining in the United States without her husband, stating that she loves him and "would not be able to live without him." That conclusory statement is insufficient to demonstrate that the applicant's wife would suffer more than the ordinary degree of emotional hardship if she decides to remain in the United States without her husband.

The hardships the applicant's wife asserted that she would face in the Republic of Georgia include separation from her daughters, parents, and brothers; inability to obtain proper medical care; inability to find employment because of the state of her health; lack of acceptance because of her Pentecostal religion, because she does not speak Georgian, and because she is Russian, and separation from her life in the United States.

In support of her assertion that she would be unable to obtain proper medical care, the applicant provided a Consular Information Sheet issued by the U.S. Department of State. That information sheet asserts that medical care is limited in Georgia and that people with pre-existing health conditions may be at risk due to inadequate medical facilities. The applicant has a daunting list of pre-existing conditions. That information sheet also indicates that religious minorities, including Pentecostals, have been targets of violent attacks. The applicant has asserted that she is a Pentecostal.

The AAO agrees that, if the applicant were to live in the Republic of Georgia it would cause her severe hardship. However, denial of the waiver application will not oblige her to leave the United States, to be separated from her family, including her children, and to face the various hardships that are the necessary results of her living in the Republic of Georgia. Failure to approve the waiver application will not cause the applicant severe hardship unless she perseveres in her decision to leave her children in the United States and to go to live in the Republic of Georgia with her husband.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife faces extreme hardship if the applicant's waiver application is not granted. Rather, the record suggests that, if she remains in the United States, she

will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor 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 affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 made clear that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the "extreme hardship" standard, hardship must be greater than the normal, expected hardship involved in such cases.

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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). 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 therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable.

As was discussed in the decision of denial, the applicant has a history of two arrests. In view of the finding that the applicant is inadmissible based on section 212(a)(9)(B)(i) of the Act, and that waiver is unavailable, however, the AAO need not determine whether, if waiver were available, those offenses would preclude its exercise discretion to grant a waiver.

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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.