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U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[redacted]

H3

FILE: [redacted] Office: NEW YORK, NY Date: MAY 22 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, 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).

Ellen C. Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, NY, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 43-year-old 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. The applicant is married to a U.S. citizen, and she seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with her husband and children in the United States.

The District Director found that the applicant failed to establish extreme hardship to her citizen spouse, and denied the application accordingly. *Decision of the District Director,* dated Jan. 11, 2007. On appeal, the applicant asserts through counsel that her husband would suffer extreme hardship if she were denied a waiver. *See Form I-290B Notice of Appeal*, dated Feb. 8, 2007; *Brief in Support of Appeal*, dated Feb. 28, 2007.

The record contains, *inter alia*, a copy of the marriage certificate of the applicant and her husband, [redacted], indicating that they were married on July 28, 1999, in New York; a brief in support of the appeal; an Affidavit by [redacted] regarding the extreme hardship that he, his U.S. citizen parents, and the couple's two U.S. citizen daughters, would suffer if the applicant is not granted a waiver; a Psychosocial Report prepared by [redacted] several family photographs; and copies of tax records and financial documents for the couple from 2002 to 2006. The entire record was reviewed and considered in rendering this decision on the appeal.

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

> (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 [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.

8 U.S.C. § 1182(a)(9)(B). The record shows that the applicant entered the United States with a B-2 visa on September 22, 1989. *See U.S. Dept. of Justice Memo to File*, dated Feb. 23, 1996. The applicant departed the United States on January 11, 1996, and attempted to return to the United States on February 23, 1996. *See id.* At that time, she was paroled into the United States for an exclusion hearing. *See Notice to Applicant for Admission Deferred for Hearing Before Immigration Judge*, dated Feb. 23, 1996. On June 11, 1996, the applicant failed to appear for her exclusion hearing, and the immigration judge entered an in absentia order of exclusion. *See Order of the Immigration Judge*, dated June 11, 1996. The applicant began to accrue unlawful presence on April 1, 1997. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 911 (BIA 2006) (holding that presence in the United States before April 1, 1997, is not considered "unlawful presence" under section 212(a)(9)(B) of the Act). Unlawful presence continued to accrue until her application to adjust status was filed on August 29, 2005, a period in excess of one year.

The applicant married [redacted] on July 28, 1999. *See Marriage Certificate*. The Petition for Alien Relative and Application to Adjust Status were filed on August 29, 2005. *See Form I-130, Petition for Alien Relative*; *Form I-485, Application to Register Permanent Resident or Adjust Status*. USCIS approved [redacted] Petition for Alien Relative on November 28, 2006. *See Form I-130, supra*. On April 21, 2006, the applicant applied for admission to the United States pursuant to a grant of advance parole. *See Form I-512L, Authorization for Parole of an Alien into the United States*, issued Nov. 29, 2005; *Form I-546, Order to Appear Deferred Inspection*, dated Apr. 21, 2006. The applicant's unlawful presence and departure from the United States triggered the ten-year bar in section 212(a)(9)(B) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. at 909.

In order to obtain a section 212(a)(9)(B)(v) waiver, the applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawfully resident spouse or parent. Hardship to the applicant herself, or to her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is 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 (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: 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. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) ("When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion."); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the INA that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

> 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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." *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 mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship unless combined with more extreme impact. In *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The applicant contends that family separation would cause extreme hardship. In support of the emotional hardship claim, [redacted] states that the couple met in Israel approximately 23 years ago, when he was about 20 years old. *See Psychosocial Report*, dated Feb. 15, 2007. The couple has been married for almost 10 years. *See Marriage Certificate* (indicating marriage on July 28, 1999). [redacted] reports a "very fulfilling and loving marriage based on the common values of family integrity, religious worship, hard work and education," and considers the applicant to be "his best friend, lover, and partner in every sense of the word." *See Psychosocial Report, supra.* Although there are no birth certificates in the record, it appears that the couple has two U.S. citizen daughters, who are 14 and 9 years old. *See Form I-130, supra.* [redacted] reports that his daughters are good students, and that the applicant "puts a lot of effort into raising [the] children the best way possible." *See Psychosocial Report, supra.* [redacted] states that because he is self

employed and works long hours, the applicant "is the glue that holds our family together." *See Affidavit of* [redacted], dated Feb. 27, 2007.

During one session with a licensed clinical social worker, [redacted] reported "poor sleep and nightmares about his family's safety," as well as depression, poor concentration, feelings of hopelessness and psychological pain as a result of the potential for family separation. *See Psychosocial Report, supra.* He feared that in the applicant's absence, "he would be lost in despair, and he does not believe he would be able to cope for himself, his ailing parents, or his daughters in any meaningful way if alone." *Id.* Additionally, should the applicant be forced to leave the United States, [redacted] indicates that he "would be in a constant state of worry for [her] safety" because "Israel is in the middle of a bloody and dangerous conflict with innocent people being killed everyday." *Id.*

[redacted] also contends that family separation would impact his ability to care for his elderly and ailing U.S. citizen parents. [redacted] claims that he moved to the United States from Israel in 1988 to care for his parents. *See id.* [redacted] states, without documentary support, that his family lives in the same apartment complex as his parents, and that the applicant is the primary caregiver for her in-laws, assisting them their medical appointments, medications, house needs and self-care. *Id.* Although there are no medical records in evidence, [redacted] reported in his psychosocial evaluation that his parents are taking various medications for a number of medical conditions. *See id.*

In support of the financial hardship claim, [redacted] claims that he financially supports his nuclear family as well as his parents. *Id.* Although the couple's 2005 tax returns indicate an adjusted gross income of $55,159.00, *see IRS Form 1040*, dated Mar. 31, 2006, the record does not contain any evidence regarding the financial status of [redacted] nuclear or extended family. [redacted] reports that he has invested significant time, money, and effort into opening his own lighting store in Manhattan. *See Psychosocial Report, supra.* He states that he is able to devote long hours to his business because his wife takes care of the family and home. *Id.* Without the applicant, [redacted] claims that he would be forced to hire a nurse or home attendant to care for his parents, which would be a financial hardship. *See Psychosocial Report, supra.* Additionally, [redacted] states that he does not know how he could maintain his business and cope with caring for his daughters if the applicant returned to Israel. *Id.* Finally, [redacted] claims that the cost of travel between Israel and New York would be financially difficult. *Id.*

The applicant also contends that [redacted] would suffer extreme hardship if he were to relocate to Israel to live with her. [redacted] became a lawful permanent resident in 1999, and he has been a U.S. citizen since 2005. *See Certificate of Naturalization*, dated Jul. 18, 2005. [redacted] states that he would not be able to go to Israel and leave his parents alone in the United States, and he claims that they have no other children or immediate relatives here. *See Affidavit of* [redacted] *supra.* [redacted] claims that a move to Israel would cause financial hardships because his investment in his lighting business would be lost. *See Psychosocial Report, supra.* Finally, Mr. [redacted] expresses fear of indiscriminate violence in Israel, states that he "cannot put his daughters at risk by going to this highly unstable area." *See Affidavit of* [redacted] *supra.*

The applicant and her husband have provided some evidence regarding the psychological hardships that would be suffered by [redacted] if the waiver is denied. *See Psychosocial Report, supra; Affidavit of* [redacted] *supra.* However, the record does not contain sufficient documentary evidence to support the claim of extreme emotional hardship. For instance, to the extent that [redacted] claims that he would suffer emotional hardship based on an inability to provide adequate care for his parents, the record does not contain any documentation regarding his parents' residence, medical conditions, or their financial situation. Going on record without supporting documentary evidence is not sufficient to meet the burden of proof in these proceedings. *See Matter of Soffici,* 22 I&N Dec. 158, 165 (Commr. 1998). Additionally, although the input of a mental health professional is respected and valuable, the AAO notes that the submitted psychosocial report is based on a single interview between the licensed clinical social worker and the applicant and her family members. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for anxiety or any other conditions. Moreover, the conclusions reached in the submitted report, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

Similarly, there is no documentary support for the applicant's allegations regarding the financial impact of the applicant's removal. For instance, the record lacks documentation regarding Mr. [redacted]s business, the family's financial status, and the cost of travel to Israel. *See id.* Additionally, the record contains no evidence to support [redacted] fears regarding country conditions in Israel. *See id.*

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's husband, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See Perez,* 96 F.3d at 392; *Matter of Pilch,* 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act.

In proceedings for an application for a waiver of the grounds of inadmissibility, 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.