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

H4

[redacted]

FILE: [redacted] Office: PHOENIX, AZ Date: APR 11 2007

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]

PUBLIC COPY

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 waiver application was denied by the District Director, Phoenix, Arizona. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Ethiopia and citizen of the United Kingdom 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 10 years of his last departure from the United States. The applicant is married to a naturalized United States citizen and seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The 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. The application was denied accordingly. *Decision of the District Director,* dated May 19, 2005.

On appeal, counsel asserts that the applicant's spouse is undergoing medical and psychological examinations. *Form I-290B and attached statement*, dated June 21, 2005. The Form I-290B indicates that counsel intends to submit a brief and/or evidence to the AAO. On February 16, 2007, the AAO contacted counsel, informing him that he had five business days in which to resubmit copies of any materials he had provided subsequent to the filing of the appeal. To date, the AAO has received no response. Accordingly, the record will be considered to be complete.

In support of these assertions, the record includes, but is not limited to, a statement from the applicant's spouse; letters of support from family members, co-workers, and friends; a medical letter from Bart Q. Eng, D.O., Family Medicine Associates, LTD.; tax statements for the applicant; and earnings statements for the applicant and her spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

In the present application, the record indicates that the applicant entered the United States under the Visa Waiver program on March 2, 1999 with authorization to remain in the United States until June 2, 1999. *See photocopy of the applicant's passport; NIIS record.* On December 3, 2001 the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status. *See Form I-485 receipt*, dated December 3, 2001. This Form I-485 was subsequently abandoned and denied. *Id.* The applicant left the United States on or about November 27, 2003. *Form I-131, Application for Travel Document.* She was paroled into the United States for deferred inspection on January 3, 2004. *Form I-94; Form I-546, Order to Appear Deferred Inspection.* On February 2, 2004, the applicant filed a second Form I-485. *See Form I-485*, receipt date February 2, 2004. The applicant accrued unlawful presence from June 3, 1999 until December 3, 2001, the date she filed her initial Form I-485. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* In applying to adjust her status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of her November 27, 2003 departure from the United States. The applicant is, therefore, 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.

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 inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's spouse if the applicant is removed. If 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 include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in the United Kingdom or 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 AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to the United Kingdom, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Egypt. *Form G-325A, Biographic Information sheet for the applicant's spouse.* His father lives in Canada, while his mother is deceased. *Id; Statement from the applicant's spouse*, dated March 22, 2004. The record fails to mention whether the applicant's spouse has any family members in the United Kingdom. Although the record notes that the applicant helps her spouse in paying the mortgage, car, utility and phone bills (*Statement from the applicant's spouse*, dated March 22, 2004), the record fails to address the financial effect upon the applicant's spouse if he were to reside in the United Kingdom. The record fails to demonstrate that the applicant or her spouse would be unable to contribute to their family's financial well being from a location outside of the United States, particularly when English is the national language of the United Kingdom. On appeal, counsel asserts that the applicant's spouse is undergoing psychological and medical examinations (*Form I-290B*), and the applicant's spouse indicates that he suffers from anxiety attacks. *Statement from the applicant's spouse*, dated March 22, 2004. However, the record contains no documentation or results of the medical tests noted by counsel and the February 24, 2004 medical form included in the record indicates only that the applicant's spouse was treated for anxiety in 2000-2001. It does not establish that he continues to suffer from this condition or has any other health concern. *Medical form signed by Bart Q. Eng, D.O., Family Medicine Associates, Ltd.* Accordingly, the record does not demonstrate that the applicant's spouse currently has any health problems or that he would be unable to receive adequate health care in the United Kingdom. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated that her spouse will suffer extreme hardship if he resides in the United Kingdom.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse stated that the applicant has provided him with moral support through his anxiety attacks. *Statement from the applicant's spouse*, dated March 22, 2004. According to the applicant's sister, the applicant's spouse suffers from a chemical imbalance. *Letter from the applicant's sister*, dated March 13, 2004. She fears that his condition will worsen if the applicant is separated from his spouse. *Id.* Letters from friends and co-workers also note that the applicant's spouse is withdrawn, depressed, and suffers from anxiety. *See letters of support from friends and co-workers*, dated March 9, 2004, March 11, 2004, March 12, 2004, and March 15, 2004. As previously noted, the record shows that the applicant's spouse was treated for anxiety from 2000 – 2001. *Letter from B[redacted] Family Medicine Associates, LTD.*, dated February 24, 2004. While the AAO acknowledges the letters from family members, friends, and co-workers regarding the mental health issues of the applicant's spouse, the record fails to include documentation from a licensed health practitioner regarding the current mental and/or physical health of the applicant's spouse. Counsel's assertion that the applicant's spouse is undergoing psychological and medical examinations is also unpersuasive, as the record fails to include documentation to support this assertion. *See 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). Without supporting documentary evidence, the assertions of counsel will not meet the petitioner's burden of proof of this proceeding. The assertions of counsel do not constitute evidence. *Id.*

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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical of individuals separated as a result of removal and does not rise to the level of extreme hardship.

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.