U.S. Department of Homeland Security
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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

U.S. Citizenship and Immigration Services

[redacted]

H4

FILE: [redacted] Office: CHICAGO, IL Date: MAY 08 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]

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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 District Director, Chicago, Illinois. 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 Macedonia 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 her last departure from the United States. The applicant has a U.S. citizen spouse and two lawful permanent resident children and she seeks a waiver of inadmissibility in order to reside in the United States.

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 and the application was denied accordingly. *Decision of the District Director,* dated November 4, 2005.

On appeal, counsel asserts that the district director failed to apply the regulations and case law to find extreme hardship to a qualifying relative and the district director abused his discretion in finding that the applicant's unintentional violation outweighed the prospective emotional, psychological and economic injury that her return would cause her family. *See Form I-290B*, received April 9, 2007.

The record includes, but is not limited to, counsel brief, statements from the applicant, her spouse, her children and her friends, information on Macedonia and the applicant's financial records. 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 April 23, 1998 with a visitor visa and she was granted an authorized period of stay until October 22, 1998. The applicant filed an adjustment of status case on October 12, 2003 and subsequently departed the United States on September 4, 2005 with an advance parole document.[1] Therefore, the applicant accrued unlawful presence from October 23, 1998, the date after her authorized period of stay expired, until October 12, 2003, the dated she field her adjustment of status application. 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.

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

[1] The AAO notes that the grant of an advance parole document does not exempt the applicant from the ground of inadmissibility in section 212(a)(9)(B)(II) of the Act.

> 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 an applicant. Hardship to an applicant's child is not a permissible consideration in a 212(a)(9)(B)(v) waiver proceeding except to the extent that such hardship may affect the 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. *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. These factors 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. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that the applicant's spouse relocates to Macedonia 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 of relocation to Macedonia. The record includes a report which details the negative trend in the Macedonian economy, high unemployment rate, and lack of protection of fundamental rights and freedoms. *Extract from the IHF Report, Macedonia*, at 1, 5, undated. No claim of hardship was expressed by counsel, the applicant or her spouse. As such, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse relocates to Macedonia with the applicant.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. Counsel states that the applicant's spouse is currently suffering from depression and extreme emotional pain due to his fear of separation from the applicant. *Brief in Support of*

Appeal, at 4, undated. Counsel states that the applicant's spouse will have to support the applicant as the unemployment rate is 40% in Macedonia and there is a slim chance that she will find a job there. *Id.* Counsel states that the applicant's spouse will have to pay a great amount of money for his family to visit the applicant in Macedonia, and he will probably be unable to sustain payments for his home, automobiles and business truck with the loss of the applicant's income and good credit. *Id.* The record is not clear as to the respective salaries of the applicant and her spouse, and the ability of the applicant's spouse to pay his bills without the applicant. Counsel provided no documentation to support his assertions. The AAO notes that without documentary evidence to support these claims, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported 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).

The applicant's spouse states that the applicant takes care of him both emotionally and physically. *Applicant's Spouse's Statement*, at 1, dated November 22, 2005. The applicant states that she has always had custody of the children as her spouse is an over-the-road truck driver. *Applicant's Statement*, at 1, dated November 29, 2005. The record includes letters from friends and family who express comments similar to those of the applicant and her spouse. The AAO notes, however, that separation as a result of removal commonly creates emotional stress and financial and logistical problems. The record does not distinguish the hardships facing the applicant's spouse from those confronting other individuals who have been separated from family members by removal. After a thorough review of the record, the AAO finds that extreme hardship has not 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.