U.S. Department of Homeland Security
Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090

U.S. Citizenship and Immigration Services

#6

[redacted]

DATE: DEC 28 2012 OFFICE: VIENNA, AUSTRIA FILE: [redacted]

IN RE: Applicant: [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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Vienna, Austria, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of the Union of Soviet Socialist Republics and citizen of Belarus 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 one year or more and seeking admission within 10 years of his last departure from the United States. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with his wife, stepdaughters, and mother-in-law in the United States.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated January 12, 2011.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) erred in denying the applicant's waiver application as USCIS took many months to adjudicate the application and conducted a cursory evaluation of the documentary evidence and statements that demonstrate the hardship that the applicant's U.S. citizen spouse would suffer because of the applicant's inadmissibility. *See Notice of Appeal or Motion* (Form I-290B), dated February 8, 2011.

The record includes, but is not limited to: briefs, motions, and correspondence from current and previous counsel; letters of support; identity, psychological, medical, employment, financial, academic, and military documents; photographs; and documents on conditions in Belarus and Poland. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, in relevant part:

> (B) Aliens Unlawfully Present.-
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> (i) In General.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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> ...
>
> (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. No court shall have jurisdiction to review a decision or action by the Attorney General [Secretary] regarding a waiver under this clause.

The record establishes that the applicant entered the United States as a B-2 Visitor on December 10, 1995, with authorization to remain until January 9, 1996. The record also establishes that the applicant did not timely depart and worked without employment authorization. He filed an asylum application with USCIS on November 14, 2002, which USCIS referred to the Immigration Court on March 4, 2003. The Immigration Judge denied his applications for asylum, withholding of removal, and withholding of removal pursuant to the U.N. Convention Against Torture, and ordered his removal to Belarus on October 14, 2004. The Board of Immigration Appeals (the BIA) dismissed his appeal of the Immigration Judge's order on August 15, 2005. The U.S. Ninth Circuit Court of Appeals dismissed his petition for review on January 25, 2006. The applicant was removed on August 18, 2008, and the record reflects that he has remained outside the United States to date. The applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions of the Act took effect, until August 18, 2008; a period in excess of one year. As the applicant is seeking admission within 10 years of departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children and mother-in-law can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only demonstrated qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or U.S. 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.

Id. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The BIA has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *In re Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the BIA has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In re Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel contends that the applicant's spouse has suffered extreme emotional, mental, physical, medical, and financial hardship in the applicant's absence as: she has been diagnosed with Major Depression and Adjustment Disorder with Anxiety; she suffers from several enduring medical conditions that are not readily curable, including a hernia in her spine, a prior heart attack, and debilitating Lumbar Disc Disease; she is unable to support herself economically because of her depression; the applicant was the sole source of the family's economic support when he was in the

United States; she is unable to secure fulltime employment as she must care for her elderly, disabled mother; she has been forced to "cash-in" her life insurance policies and has "used-up" her savings; she is dependent on the charity and loans from friends and neighbors, which are expected to be repaid upon the applicant's return to the United States; and the applicant is unable to make a sufficient income in Belarus to support both households, but he has a job offer of earning $60,000/annum upon his return to the United States. The applicant's spouse further indicates that: her love for the applicant means everything to her as she had a difficult life until her relationship and marriage to him; her daughters are very close to the applicant, and he serves as the "closest thing" to a father given that their biological father has not had a relationship with them; she suffers from Lyme Disease; she is working part-time to ensure that a foreclosure of their house does not occur, but it is difficult for her to work given her physical conditions; she had health and life insurance, but has been unable to afford them without the applicant; the costs associated with travel to Belarus are great; their credit cards have reached their maximum limits; the applicant currently works as a paramedic at a children's hospital in Belarus, but he is barely able to cover his monthly expenses; her eldest daughter suffers from hearing loss in her left ear for which there is not a treatment and she is unable to wear a hearing aid; and her daughters have experienced difficulties with their academic studies given that they must also work part-time to help pay for their personal and household expenses.

Although the applicant's spouse may experience hardship in the applicant's absence, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record is sufficient to establish that [redacted], diagnosed the applicant's spouse with Adjustment Disorder with Mixed Anxiety and Depressed Mood, and that [redacted] D.O., prescribed Celexa for the applicant's spouse on October 16, 2009. *See Psychological Evaluation*, dated May 30, 2009; *see also Prescription*. However, the AAO notes that [redacted] evaluation is dated almost one year and nine months prior to filing the appeal, and that [redacted] prescription is dated almost one year and four months prior to the submission of the applicant's appeal, and that the record does not include any evidence of the applicant's spouse's current mental health.

Additionally, the record is sufficient to establish that the applicant's spouse has been under Dr. [redacted] care since June 2006 for Lumbar Disc Disease. *See Medical Letter*, dated July 30, 2009. However, the AAO notes that the record does not include any discussion concerning the course of treatment that the applicant's spouse is receiving for this medical condition or any indication that the applicant's presence would be advantageous in such treatment. Rather, [redacted] letter only indicates that the applicant should be granted his "immigration visa so that he can be there morally and financially for his family." The AAO notes that the record also includes a Discharge Summary, indicating that the applicant's spouse was admitted to Frankford Hospital on August 1, 2002, for a physical condition that may be secondary to Lyme Disease. *See Discharge Summary Issued by* [redacted] However, the Discharge Summary contains medical terminology and abbreviations that are not easily understood. The document submitted is otherwise indiscernible and does not contain a clear date of issuance or an explanation of the medical condition of the applicant's spouse. Absent an explanation in plain language from the treating mental health professional and physician of the exact nature and severity of any condition and a description of any treatment or

family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a mental health or medical condition or the treatment needed.

Further, the record includes some evidence of the applicant's and his spouse's financial obligations and that their life insurance policies were terminated in February 2009. However, the AAO notes that the most recent billing statement in the record is dated November 16, 2009; about one year and three months prior to the submission of the applicant's appeal. Additionally, the record does not include sufficient evidence of the applicant's income while he was in the United States or of his spouse's current income. *See Employment Letter Issued by* [redacted] dated October 10, 2009. Accordingly, the AAO cannot conclude that the record establishes that the applicant's spouse's financial hardship would go beyond the normal consequences of inadmissibility.

The AAO notes the concerns regarding the applicant's spouse's hardship, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Counsel contends that the applicant's spouse will suffer extreme hardship upon relocating to Belarus to be with the applicant as: the applicant's spouse has assimilated to the American culture and created numerous attachments and community ties given that she has lived in the United States for almost 14 years; she maintains close ties to her U.S. citizen daughters and brother as well as her elderly, disabled, lawful permanent resident mother,[1] who lives with her and for whom she provides care; and her mental health conditions would affect her ability to adjust to separation from her daughters again. The applicant's spouse further indicates that: her mother would be unable to relocate to Belarus with her because her mother would be unable to obtain medical care; she missed her daughters' childhood, and accordingly, will not be separated from them again; it would be difficult for her to obtain employment given her age and illnesses; and the applicant is uncomfortable living with his mother and brother in a remote village, and he has lost touch with old friends and acquaintances.

The record is sufficient to establish that the applicant's spouse would suffer hardship if she were to relocate to Belarus. She has continuously resided in the United States for almost 15 years, and maintains close ties with her immediate, U.S. citizen family members, including her daughters and elderly mother who lives with her.[2] She also has established community ties as evidenced by her relationship to her church and the letters of support from neighbors and other community members.

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[1] The AAO notes that at the time of submission of the applicant's appeal, the applicant's spouse's mother was a lawful permanent resident, but subsequently naturalized and became a U.S. citizen on January 8, 2012.

[2] The AAO notes that counsel indicates that the applicant's spouse's brother is a U.S. citizen and that the applicant's spouse indicates that her brother lives in Connecticut. However, the AAO also notes that the record does not include specific evidence of the brother's current immigration status in the United States.

Additionally, the U.S. Department of State's current advisory for Belarus states: "Medical care in Belarus is neither modern nor easily accessible ... There are no hospitals in Belarus that provide a level of medical care equal to that of Western hospitals ... Despite the recent emergence of facilities which offer private 'advanced' medical services, modern diagnostic equipment and even basic supplies are still lacking. Traumatic injuries are especially serious as the level of care and competence to deal with them are well below U.S. standards." *Travel Advisory, Belarus*, issued September 13, 2011. In the aggregate, the AAO finds that the applicant's spouse would suffer extreme hardship if she were to relocate to Belarus.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. In re Pilch*, 21 I&N Dec. at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

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 remains entirely with the applicant. 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.