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

H2

[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: DEC 03 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Ground 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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director of the California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 42-year-old native and citizen of Turkey 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 citizen of the United States, and he 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 his wife and stepdaughter in the United States.

The Director found that the applicant failed to establish extreme hardship to his spouse, and denied the application accordingly. *Decision of the Director,* dated Jan. 18, 2007. On appeal, the applicant contends through counsel that the Director erred in denying the waiver application. *See Brief in Support of Appeal.* Specifically, counsel contends that the Director failed to consider all of the relevant hardship factors that would be imposed on the applicant's wife if she relocated to Turkey, and misapplied legal precedent in denying the application. *Id.* Counsel also claims that the applicant merits a grant of the wavier in the exercise of discretion. *Id.*

The record contains, *inter alia*, an affidavit from the applicant's wife in support of the waiver application; a U.S. Department of State report on country conditions in Turkey; the couple's marriage certificate; a birth certificate for the applicant's step-daughter; copies of the applicant's medical benefits identification cards; financial and tax documents; family photographs, and a brief on appeal. The entire record was reviewed and considered in rendering this decision on appeal.

Section 212(a)(9) 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 [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.

The record shows that the applicant was admitted to the United States on January 12, 1999, as a nonimmigrant visitor (B-2) with authorization to remain until July 11, 1999. *See Form I-94.* The applicant and his spouse filed a Petition for Alien Relative (Form I-130), and an Application to Register Permanent Resident or Adjust Status (Form I-485) on July 9, 1999. The District Director, New York, denied the Form I-485 on February 13, 2001. *See Decision of the District Director.* On November 25, 2002, the applicant's spouse filed a second relative petition, and the applicant filed a second adjustment application. U.S. Citizenship and Immigration Services (USCIS) records reflect that the applicant reentered the United States after a trip abroad on May 6, 2005. *See also Form I-601, Application for Waiver of Ground of Excludability* (noting the applicant's travel on advance parole). USCIS approved the second Form I-130 on August 23, 2006. *See Form I-130.* The applicant accrued unlawful presence during the period from February 14, 2001, to November 24, 2002, when he did not have a properly filed pending application for adjustment of status. The applicant's departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. *See Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006).

In order to obtain a section 212(a)(9)(B)(v) waiver, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse or parent. *See* 8 U.S.C. § 1182(a)(9)(B)(v).[1] Under the plain language of the statute, hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. *See id.* (specifically identifying the relatives whose hardship is to be considered); *see also INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States and in the event that he or she accompanies the applicant to the home country. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). 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) (en banc).

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. at 565. 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

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[1] Although the Director incorrectly referred to the waiver provision set forth in section 212(i) of the Act, 8 U.S.C. § 1182(i), which is inapplicable to this appeal, the error is harmless because both waiver provisions require the same showing of extreme hardship to a qualifying relative.

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 565-66. 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) (per curiam) ("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 Act 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 record reflects that the applicant's spouse is a 32-year-old native and citizen of the United States. *See Form I-130.* The couple has been married for ten years. *See Marriage Certificate* (indicating marriage on July 6, 1999). The applicant's wife has a 14-year-old daughter from a previous relationship. *See Birth Certificate for* It appears that the applicant has four children with his former wife, ranging in age from nine to 16 years. *See Form I-485*, filed Nov. 25, 2002. The applicant's wife contends that relocation to Turkey and separation from the applicant would cause extreme hardship to her and her daughter.

Regarding potential relocation to Turkey to live with the applicant, the applicant's wife claims that as an African American Christian woman with an American daughter, she will suffer from

discrimination, harassment, and the lack of religious freedom and other fundamental human rights. *See Affidavit of* Mrs. also contends that it would be an extreme hardship to be forced to "move to a completely strange country," where she is unable to speak, read or write the Turkish language. *Id.* Because of these language and cultural barriers, the applicant's wife fears that she could not be employed, and that she would not be able to obtain adequate medical assistance. *Id.* states that she suffers from serious asthma and hypertension, requiring prescription medications paid for by the applicant's health insurance, and that she would not be able to afford her medical treatment and prescriptions in Turkey. *Id.* also claims that it would be a hardship to give up her job and family in the United States. *Id.* Additionally, the applicant's wife states that her daughter "needs special educational assistance in her learning and without this help in the United States, her education and her future will be totally ruined." *Id.* Finally, the applicant's wife refers to country conditions information showing human rights problems in Turkey, including reports that Turkish security forces regularly torture, beat, and abuse people. *Id.*

Given the applicant's wife's ties to the United States, and her apparent lack of ties to Turkey, it appears that relocation to Turkey could impose hardships. However, there is insufficient evidence in the record to support a finding that the applicant's wife would suffer extreme hardship. First, the applicant has presented no evidence to support claimed fear of extreme mental hardship based on the reports of religious discrimination in Turkey. For example, the record lacks evidence to support claim that she has been a practicing Protestant Christian all of her life and that religion has always been the most significant part of her family's life and support, such as letters from her church or minister.

Second, although the record shows that and her daughter were born and raised in the United States, there is no evidence regarding additional U.S. family ties that would be impacted by relocation to Turkey. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565 (noting relevance of the qualifying relative's family ties to U.S. citizens or lawful permanent residents in the United States); *see also Letter from* , dated May 16, 2006 (stating that her mother is deceased and that she has no contact with her father).

Third, the applicant's wife has not presented any evidence documenting the existence of her medical conditions. The record contains copies of the applicant's health insurance cards, but without evidence regarding the severity of his wife's claimed illnesses, her prognosis, and the need for continuing treatment and care that would be unavailable to her in Turkey, the AAO cannot conclude that her that relocation to Turkey would cause extreme medical hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565 (noting relevance of significant health conditions and availability of medical care). Additionally, to the extent that the applicant's stepdaughter's learning disability causes hardship to , the applicant has not provided any supporting evidence of the existence or severity of this condition.

Fourth, the record lacks sufficient evidence to support a finding that relocation would cause extreme financial hardship to the applicant's wife. The record indicates that the applicant has been employed as an electronic technician, earning $34,000 per year. *See Tax Records for 2004.* Although counsel asserts that the applicant "will not be able to find any proper employment and provide [his wife]

with the necessary financial support, including all the medical expenses, because of his age and lengthy absence from his country," *see Brief on Appeal*, there is no documentation in the record to support this contention. Simply going on record without supporting evidence is insufficient to meet the applicant's burden of proof. Further, the unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Similarly, the record does not support counsel's assertion that the applicant's wife would be prevented from living and working in Turkey. *See U.S. Dept. of State Country Report on Human Rights Practices in Turkey* (noting that although women in Turkey face discrimination in employment to varying degrees, "women generally received equal pay for equal work."). Further, a reduction in income and standard of living is not sufficient to show extreme hardship. *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981) (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

Fifth, although the applicant has presented some evidence regarding human rights violations in Turkey, the record contains insufficient evidence that [redacted], in particular, would be subjected to any of these violations upon relocation. Finally, any adjustment difficulties caused by the move to a new country, as well as inability to communicate in Turkish, do not rise to the level of extreme hardship. *See Perez,* 96 F.3d at 392 (holding that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation).

Regarding family separation, the applicant's wife asserts that she and her daughter will suffer extreme emotional, medical, and financial hardships as a result of his removal from the United States. In support of the psychological hardship claim, the applicant's wife states that the "emotional impact" of separation "will cause a major dysfunction to [their] lives . . . as there is an unbreakable bond between [them] in every aspect." *Affidavit of* [redacted]. Mrs. [redacted] states that the "mental dilemma" of choosing between separation and relocation to Turkey would "rip [her] heart right out of [her] chest[, and the] constant struggle will eventually kill [her]." *Id.* Regarding medical hardship, [redacted] claims that she has suffered from asthma and hypertension for many years, and that she obtains medications for these conditions through the applicant's health insurance. *Id.* She further notes the high cost of medical treatment in the United States for those without medical insurance. *Id.* Finally, the applicant's wife indicates that separation would cause extreme negative impact on a financial level. *Id.*

Here, the evidence presented is not sufficient to support a claim of hardship that rises beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez,* 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. First, the Board has held that the emotional hardship caused by severing family ties is a common result of deportation and does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627, *supra*. There is no evidence in the record to support the applicant's wife's contention that the applicant's removal to Turkey would cause her, for example, "major dysfunction" or physical danger. Further, any hardship to the applicant's step-daughter is not calculated in the extreme hardship analysis, except to the extent that this hardship impacts the applicant's wife. *See* 8 U.S.C. § 1182(a)(9)(B)(v) (omitting consideration of hardship to the applicant and to his or her children). Although the applicant's wife contends that her learning-

disabled daughter has formed a very strong bond with the applicant, there is insufficient evidence to conclude that the impact of separation on the applicant's step-daughter would cause extreme emotional hardship to the applicant's wife.

Second, as noted above, the applicant has not presented any documentation, such as medical records, regarding the existence and severity of his wife's medical conditions to support the claim of medical hardship.

Finally, although the financial impact of family separation could cause serious difficulties for the applicant's wife, the record does not contain sufficient evidence to support a finding that her hardship would be extreme. Here, it appears that the applicant was the sole wage earner in 2004. *See IRS Form 1040 (2004)*; *Form W-2 (2004)*. However, the record contains evidence that . has been employed on a full-time basis as of February 1, 2005. *See Letter from L&M Bus Corp.* Without the applicant's financial assistance, would not be able to meet the expenses cited in the record. However, as noted above, there is insufficient evidence to support the applicant's claim that he would be unable to secure employment in Turke Accordingly, there is insufficient evidence to show that family separation would cause to suffer extreme financial hardship. Moreover, even if family separation would impose extreme financial hardship on she has not shown that any hardships based on relocation to Turkey would rise to the level of extreme hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-68 (considering the hardships of family separation and relocation).

In sum, although the applicant's spouse has presented claims of harm based on relocation or family separation, the record does not contain sufficient evidence to support these claims and to show that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *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 his spouse, as required under section 212(a)(9)(B)(v) of the Act. Because the applicant has not shown extreme hardship to a qualifying relative, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 568.

In proceedings for an 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. *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.