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

U.S. Citizenship  
and Immigration  
Services

H2

FILE:

Office: CALIFORNIA SERVICE CENTER

Date: JUN 25 2009

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i) and Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

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).

A handwritten signature in black ink that reads "Michael Shumway".

John F. Grissom  
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Trinidad, the husband of a U.S. citizen, and has a U.S. citizen stepson and a U.S. citizen son. The applicant is the beneficiary of an approved Form I-130 petition filed by his wife.

The district director found that the applicant had misrepresented material facts in applying for a U.S. visa, and is therefore inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The director found that the applicant had been unlawfully present in the United States for more than a year, and is therefore inadmissible pursuant section 212(a)(9)(B)(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i). The applicant seeks a waiver of inadmissibility in order to remain in the United States with his wife, stepson, and son. The district director also found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application.

On appeal counsel contended that the decision of denial was based on a mistaken interpretation of applicable precedent. Counsel also submitted additional evidence. Although counsel did not appear to contest the director's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

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

Any alien (other than an alien lawfully admitted for permanent residence) who –

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 1254a(e) of this title) prior to the commencement of proceedings under section 1225(b)(1) or section 1229(a) of this title, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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.

The applicant entered the United States on December 8, 1998 on a B-1 visa that permitted him to remain in the United States until June 7, 1999. The applicant remained in the United States after the expiration of his visa.

On November 12, 1999, the applicant was arrested for having overstayed his visa and was placed in deportation proceedings. On April 11, 2000, the applicant was granted voluntary departure, and permitted until August 9, 2000 to depart the United States. The applicant subsequently applied for a U.S. visa in Trinidad, which visa was granted on July 26, 2000. This indicates that the applicant had departed the United States prior to that date.

Subsequent to the applicant's departure, the applicant indicated, on an OF-156, Nonimmigrant Visa Application, that he submitted to the Immigration and Naturalization Service, that he had never been arrested, that he had never been the subject of a deportation hearing, and that he had never violated the terms of a U.S. visa.

The director found that the applicant had been unlawfully present in the United States from his December 8, 1998 entry until April 11, 2000, and had, therefore, been unlawfully present in the United States for more than one year. The director found that the applicant's subsequent voluntary departure therefore rendered him inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

This office disagrees, in part, with that finding. The applicant was in the United States on a facially valid visa from his December 8, 1998 entry his period of authorized stay expired on June 7, 1998. He was then unlawfully present from June 8, 1998 to April 11, 2000, when he was granted voluntary departure. That unlawful presence encompassed a period greater than six months, but less than a year. Upon his departure, he became ineligible pursuant to section 212(a)(9)(B)(i)(I) of the Act, which inadmissibility lasted for three years, beginning on the date he departed.

The record is not clear when that departure transpired, though it was between April 11, 2000, when he was in the United States and was granted voluntary departure, and July 26, 2000, when he applied for a visa in Trinidad. Notwithstanding the actual date the applicant departed, three years have transpired since that departure, and the applicant is no longer inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act, nor was he inadmissible on that basis on May 8, 2006, when the decision denying the waiver application was issued. The director's finding that the applicant is inadmissible based on his unlawful presence in the United States is withdrawn.

The remaining basis for finding the applicant inadmissible is his misrepresentation on the Form OF-156, Nonimmigrant Visa Application, that he had never been arrested, that he had never been the subject of a deportation hearing, and that he had never violated the terms of a U.S. visa. The applicant had, in fact, been arrested for an immigration violation, specifically, overstaying his previous visa, which is a violation of the terms of the visa. As a result, the applicant had, in fact, been the subject of a deportation hearing.

The applicant misrepresented all three of those facts in a visa application. If he had revealed the truth, he would have been found inadmissible pursuant to section 212(a)(9)(B)(i)(I) of the Act, for having been unlawfully present in the United States for more than six months and less than a year

within the previous three years. The applicant's misrepresentation in pursuit of a visa was, therefore, manifestly material to the approvability of that visa, and the applicant was granted his visa based on that material misrepresentation. Because of that misrepresentation, the applicant is now clearly inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Because the applicant has been found inadmissible, the balance of this decision will pertain to whether waiver of his inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

A waiver of inadmissibility under section 212(i)(1) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children or stepchild is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined 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 set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, 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. The BIA has held:

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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

The record contains some letters that are essentially character references for the applicant. Those letters attest to the applicant's various good qualities. The record contains some letters recommending the applicant for employment in specific positions and performance appraisals for his performance at work. The applicant's character, his relationship to the children, and his capacity for employment are not directly relevant to whether waiver is available to the applicant. As was explained above, whether waiver is available depends upon whether the applicant is able to show that failure to approve the waiver application would result in extreme hardship to his wife.<sup>1</sup>

A letter, dated April 28, 2005, from [REDACTED] a medical doctor, indicates that the applicant's wife was then pregnant<sup>2</sup> and states that raising two children by herself would present an emotional, financial and economic hardship.

The record contains a letter, dated June 21, 2005, from a co-worker of the applicant's wife, who stated that she has known the applicant's wife for five years and that the applicant's wife has recently exhibited signs of stress, especially when discussing the applicant's immigration status. She also stated, "Aside from being the completion of a family, [the applicant] has been a steady support for Stacie as she finished her MBA degree."

The record contains a letter, dated June 22, 2005, from another of the applicant's wife's coworkers. That coworker stated that she has witnessed the applicant's wife's increased stress and exhaustion as she attempts to cope with work, the applicant's appeal in the instant matter, her pregnancy, and the possibility that the applicant might be deported.

Another letter dated June 22, 2005 is from a friend of the applicant's wife. That friend stated, that she has known the applicant's wife for 15 years, and that during the applicant's wife's first pregnancy the father of her child was deported.<sup>3</sup> The friend further stated that, after the birth of her

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<sup>1</sup> If the applicant were to meet the threshold requirement of showing that his removal would cause extreme hardship to his wife, and waiver were therefore available to him, then those documents pertinent to his character and employability might be considered relevant to whether waiver should, as a matter of discretion, be granted to the applicant.

<sup>2</sup> [REDACTED] a child of the applicant and his wife, was born on July 20, 2005.

<sup>3</sup> Nothing else in the record supports the assertion that the father of the applicant's stepson was deported. In fact, in a report described below, a social worker stated, apparently based on the

first child, the applicant's wife's father was able to assist her in various ways, but that the father's failing health now renders that impossible. She expressed the fear that without the applicant's help the applicant's wife would become even more depressed and unable to complete her education and to provide for her children.

The record contains a letter, dated June 24, 2005, from the applicant's father-in-law, ██████████ ██████████ noted that, if the waiver application is not approved, then his daughter, the applicant's wife, would be obliged to choose between accompanying the applicant to Trinidad and remaining in the United States. ██████████ stated that facing that decision is causing her more stress and anguish than he has ever seen her experience before.

██████████ stated that he then suffered from spinal stenosis, herniated discs, prostrate problems, blurred vision with 75% loss of vision in the left eye, constant migraines, severe arthritis, spinal bifida, and major depression. He further stated that, although he has various family members, they are all in difficult circumstances, which he enumerated, and are unable to render him any assistance. He noted that he is currently married, but stated that the relationship between him and his wife is strained, and suggested that the marriage may not continue. As a result, he stated, his daughter and the applicant are the only people on whom he is able to rely. ██████████ stated that he relies on his daughter and the applicant for household work, assistance with transportation, hospital visits, and his household and medical expenses. Finally, ██████████ stated that because of his medical and financial condition, he would be unlikely to be able to visit his daughter and his grandchildren if they relocate in Trinidad.

In a letter, dated June 27, 2005, a registered nurse, the Manager of the Chestnut Ridge Hospital, at which the applicant's wife was then employed, stated that the applicant's wife has been exhibiting symptoms of stress, including poor concentration, low tolerance for frustration, and pre-occupation with her personal affairs, during the past several months.

The record contains a notarized letter, dated June 27, 2005, from the applicant. The applicant stated that if he returns to Trinidad and his wife remains in the United States with the children, she would be a single mother with little or no support from her family, because of the distance and difficulties of the other family members, as enumerated in his father-in-law's letter. The applicant stated that the children would grow up with little or no contact with him, and that his wife and family would struggle emotionally and financially. He noted that he has been the only father his stepson has ever known, and that his wife would suffer if she is unable to help her father in his difficult circumstances.

The applicant stated that he and his wife have student loans totaling more than \$109,000, that his wife will not be able to meet their financial commitments by herself, and that if they all relocate to Trinidad, they will still be unable to pay their obligations because there are few employment opportunities for them there. The applicant stated that, if the waiver application is not granted, his

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applicant's wife's own report, that the father of the applicant's stepson departed voluntarily and subsequently asserted that he was unable to return, which assertion the applicant's wife doubts.

wife will suffer financially to such an extent that it would constitute extreme hardship. He stated that his wife would not be emotionally equipped to handle the stress of raising two children and caring for her father without his assistance.

The applicant stated that his wife's moving to Trinidad would entail extreme hardship because she would be obliged to abandon her father, because Trinidad is a third world country and is not as medically, educationally, and technologically advanced as the United States, and because crime is rising at an alarming rate. He further stated that foreigners are popular targets for criminals. He described crimes of which his family members in Trinidad, apparently natives of Trinidad, had been victims.

The applicant noted the climactic difference between Trinidad and the United States and stated that the stepson's allergies, which are seasonal in the United States, would affect him year-round in Trinidad. He stated that the stepson is very bright, but would not have the same educational opportunities in Trinidad that he has in the United States. The applicant also stated that his wife intends to enter a PhD program soon, but would be unable to if she moves to Trinidad.

The record contains a notarized statement, dated June 27, 2005, from the applicant's wife. She recited the various ways in which the applicant supports her and her child and noted her father's ailments. In addition to the medical problems previously listed, she stated that he has had two heart attacks, a stroke, prostate surgery, and a disc replacement; suffers from carpal tunnel syndrome, depression and anxiety; and is facing another surgery on his neck. The applicant's wife stated that facing her father's medical condition has been difficult for her, causing her stress, and that the applicant has consoled her.

She reiterated that her father's marriage is unlikely to endure and indicated that she anticipates that she and the applicant will become her father's sole caretakers, caring for him and assisting him financially, which she does not believe she could accomplish without the applicant. She stated that the emotional and physical stress of raising two children alone, caring for her father and herself, and maintaining permanent employment is inconceivable to her, and that she fears that without the applicant's emotional, physical, and financial support her children will not lead full, healthy, normal lives. She further stated that the burden of choosing, in the event that the applicant is removed to Trinidad, between losing her husband and abandoning her father is too onerous. She also observed that her family is scattered among several states and many family members are already caring for other family members who are chronically ill.

The applicant's wife stated that if she moves to Trinidad with her children they would face a considerable adjustment, that the education and medical care available are inferior to that in the United States, and that living standards are lower in general. She stated that her older child, the applicant's stepson, suffers from allergies that she characterized as severe, that he is taking medications for those allergies, and that they are contemplating further treatment for those allergies. She stated that moving to Trinidad would worsen the child's allergies. She stated that she and the applicant believe that the child's allergies can best be treated in the United States. She further stated

that she does not believe that Trinidad is a safe place to raise children because of the rise in crime, citing robberies and kidnapping as a grave concern.

The applicant's wife also stated that, after the birth of her first child, she became depressed and experienced hallucinations due to lack of sleep. She indicated that she recovered sufficiently to acquire full-time employment. She stated that her father was then unable to assist her financially, but is now too ill. She stated that during that period she drove her infant to her aunt's house, one and one-half hours away, so that she could work full-time, but that the aunt is also too ill to help her now. She also stated that during that time a friend stayed with her during some weekends.

The applicant's wife stated that she now worries that without the applicant she would be unable to sustain a normal life, and that this concern has caused her tearful days and sleepless nights. She stated that she has great financial obligations, including over \$100,000 in student loans, and must retain her job both to satisfy those obligations and to retain her health insurance and pay other healthcare costs. The applicant's wife stated that she hopes to enroll in a PhD program and does not believe that she could accomplish this additional education without the applicant's support. She also stated that because there is only one college in Trinidad "the quality and variety of their Ph.D. program [sic] are not even comparable to those offered in the United States." The applicant's wife did not state the field in which she wished to pursue her doctorate, or whether a doctorate in that field is offered in Trinidad. Although she stated that the quality of PhD programs in Trinidad is inferior to what is available in the United States, she did not offer any basis for an unfavorable comparison of the graduate education available in Trinidad to whatever PhD program she is considering in the United States.

The record contains another letter, signed by the applicant's wife on June 29, 2006, and sealed by a notary public. The applicant's wife reiterated positions stated in her June 27, 2005 letter. The applicant's wife also stated that, since receiving the notice that the Form I-601 waiver application was denied, she has been seeing a psychologist for major depressive disorder. She indicated that the pressures of being a single mother would be very difficult for her, and that being without the applicant would have a bad effect on her children. She stated that her older child becomes upset and cries if the applicant is not home from work before the child has to go to bed. She detailed the extensive relationship the applicant has with her two children and his support for her during stressful times.

The applicant's wife stated that the education, medical care, and standard-of-living in Trinidad are "vastly inferior" to what is available in the United States. She stated that many children go without immunizations and that she would consider surgery in Trinidad to be unreasonably risky, but noted that neither she nor either of her children needed surgery. She reiterated that her older child suffers from allergies, and that Bermuda grass and plantain, grow year-round in Trinidad, and concluded that his allergies would therefore be more pronounced if he were obliged to live in Trinidad.

The applicant's wife commented further on the crime rate in Trinidad. She stated that it is especially worrisome because ". . . those targeted for kidnapping are persons who are not native Trinidadians,"

and “robberies of foreigners is [sic] high, especially those who are traveling from the United States . . . .”

The applicant’s wife concluded that she is unable to decide between raising her children and caring for her father in the United States without the applicant, or taking her children to Trinidad to be with the applicant.

The record contains a consular information sheet, dated June 27, 2006, that states that crime is on the rise in Trinidad and Tobago, and advises caution. It states that medical care is limited compared to that available in the United States, and that care in public health facilities is below U.S. standards. It further states that better medical care is available at private facilities to those able to demonstrate the ability to pay for it. It does not support the applicant’s wife’s implication that suitable surgical facilities and medical care are unavailable in Trinidad.

The record contains news articles pertinent to gruesome murders in Trinidad, including the murder of a U.S. citizen child. The record does not indicate that his citizenship was a precipitating factor.

The record contains a report, dated June 22, 2005, from [REDACTED], a social worker in Pittsburgh, Pennsylvania. [REDACTED] stated that he interviewed the applicant and his wife on May 11, 2005. He stated that the applicant’s wife’s mood was euthymic; that is, not depressed.

[REDACTED] described the applicant’s wife’s childhood, which included abandonment by her mother at age 12, but indicated that she has grown to be “a moral, ethical, altruistic adult,” and “a dedicated devoted parent.” He described her college years and her meeting the father of her first child, whom he indicated subsequently abandoned the applicant’s wife. He described her subsequently meeting and marrying the applicant.

[REDACTED] indicated that the applicant’s wife reported that she broke down in tears when she learned that the applicant’s future in the United States is uncertain, that she continues to cry frequently, and that she fears “a major depressive episode, like her father has suffered,” in the event that the applicant is obliged to leave the United States.

[REDACTED] added that the applicant’s stepson would also suffer if separated from the applicant, noting that, although he had not seen the applicant and the child together, he was told that the applicant’s stepson has bonded to him as his parent.

In his June 22, 2005 letter, based on a May 11, 2005 interview, [REDACTED] indicated that the applicant’s wife was then enrolled in an MBA program, and suggested that she needed the applicant’s support to complete that program. The AAO notes that a June 21, 2005 letter from a coworker, described above, indicated that the applicant’s wife had completed an MBA program. The AAO concludes that the applicant’s wife completed the MBA program between May 11, 2005 and June 21, 2005, and that, by the time the [REDACTED] completed his letter, the applicant’s wife had already graduated from that program and no longer required the applicant’s support in that particular endeavor.

The record contains a letter, dated June 29, 2006, from [REDACTED], a social worker. She stated that, pursuant to the applicant's wife's request, she was providing a description of the applicant's wife's diagnosis and treatment and a discussion of the anticipated effect on the applicant's wife if the applicant is obliged to leave the United States. She indicated that she first saw the applicant's wife on May 25, 2006, and had seen her once subsequently. She stated that the applicant's wife's "... intake information revealed a moderate Major Depressive Disorder, with postpartum onset, having been present [on May 25, 2006] for over ten months." She further stated, that the applicant's wife's "... current functioning is diminished, due to the depression, and due to the ongoing psychosocial stressors related to [the applicant's] immigration status," and that "... the stresses of single parenting may be extremely difficult [for the applicant's wife] in light of her current depression." [REDACTED] did not describe any treatment of the applicant's wife in that letter.

The record contains a letter, dated February 21, 2007, also from [REDACTED]. Again, she stated that, pursuant to the applicant's wife's request, she was providing a description of the applicant's wife's diagnosis and treatment and a discussion of the anticipated effect on the applicant's wife if the applicant is obliged to leave the United States. The balance of the letter also reiterated the assertions of the first letter from [REDACTED]. Ms. [REDACTED] stated, "I have continued to see [the applicant's wife] since June 2006," but did not state with what frequency. In both letters she stated that the applicant's wife initially did not want to use anti-depressants, but was referred to her obstetrician to evaluate for medications. Notwithstanding that [REDACTED] stated that she was providing a description of the applicant's wife's treatment, the letter did not state whether [REDACTED] had undertaken any treatment of the applicant's wife or prescribed any medications.

In his June 22, 2005 letter, [REDACTED] stated that he had interviewed the applicant and his wife. Although he reported that the applicant's wife broke down in tears when she learned that the applicant's waiver application had been denied, [REDACTED] indicated that the applicant's wife did not appear to be depressed.

An undated letter from [REDACTED] indicates that he saw the applicant's wife again on June 5, 2006, and that the applicant's symptoms had become debilitating during the previous six weeks. [REDACTED] stated that [REDACTED] the social worker who provided letters discussed above, assessed the applicant's wife to meet the diagnostic criteria for major depressive disorder,

... and is coordinating with [the applicant's wife's] midwife to begin a trial of a psychoactive agent, [REDACTED] aimed at targeting the depressive symptoms. Additionally, a treatment plan of outpatient supportive psychotherapy is recommended."

stated, "[the applicant's wife] rates her current level of depression as twice as severe as the depressive bout she suffered in adolescence, when she suffered parental abandonment by her mother." [REDACTED] stated, "[the applicant's wife] fears that if her current [diminution] in functioning persists, she will be in danger of losing her job." [REDACTED] stated that the applicant's wife reported that her depression has worsened over time as a result of the applicant's immigration

difficulty and her father's serious medical conditions, noting that her father had recently been diagnosed with advanced prostate cancer. [REDACTED] stated, "Under duress, it is likely that [the applicant's wife] would suffer a recurrence of a Major Depressive Episode of Moderate to Severe severity," "[the applicant's wife's] current level of debilitation and severity is a prognostic indication of the likelihood of a severe depression in the future if she is separated from her husband . . .," and "Up to 15% of individuals with severe MDD die by suicide."

[REDACTED] stated that he hopes that the introduction of an antidepressant might diminish the severity of the applicant's wife's symptoms, but that because her condition is likely caused by extrinsic factors, by which he apparently meant the applicant's immigration status and her father's illnesses, he is skeptical about the long-term efficacy of such a course of treatment, and doubts that the applicant's wife "will enjoy a remission of [the symptoms of depression] until the imposing psychosocial stressors are mitigated."

[REDACTED] concluded,

[The applicant's wife's] ability to cope with the coincident losses of her father and her husband, her primary supports, will undoubtedly exceed her capacity to cope; the anticipation of these eventualities has already precipitated a significant psychiatric disorder.

The record contains a report issued by a Summit on Women and Depression held by the American Psychiatric Association, which confirms that children of depressed parents are at increased risk of depression. The record contains a printout of web content from a site maintained by the National Institutes of Mental Health. That report confirms that some types of depression can run in families, that depression can occur *post partum*, and that the emotional support of friends and family is important to a depressed person's recovery.

The record contains a letter, dated September 19, 2005, from [REDACTED] a medical doctor and associate professor in the West Virginia University Department of Pediatrics Section of Pediatric Allergy and Immunology. That letter is addressed to another doctor. [REDACTED] stated that she saw the applicant's stepson on that date, and that he has multiple allergies and a history of nosebleeds, but no history of asthma. She prescribed two drugs to the applicant's stepson on that date.

The record contains multiple records of examinations of the applicant's stepson by doctors pertinent to his allergies. A Pre-Med Summary Report dated June 5, 2006 indicates that he was diagnosed with asthma.

The record contains another letter, dated June 5, 2006, from [REDACTED] That letter is addressed to the same doctor as the September 19, 2005 letter. [REDACTED] stated that the applicant's stepson was seen for a follow-up evaluation of his allergic rhinitis and allergic conjunctivitis. [REDACTED] prescribed eye drops in addition to the two medications previously prescribed.

The record contains a letter, dated November 11, 2007, from the applicant's wife's father, whose address is in Uniontown, Pennsylvania, approximately 30 miles from the address of the applicant and his wife in Morgantown, West Virginia. In that letter, the applicant's father-in-law stated that he has been diagnosed with Alzheimer's disease and his health has continued to decline.

In a brief, dated June 29, 2005 and submitted with the Form I-601 waiver application, counsel stated that the applicant has been accepted into graduate school and is opening a restaurant with his wife. Counsel stated that if the applicant must go to Trinidad to live, and his wife accompanies him, she will suffer extreme hardship. He noted that her child would necessarily accompany her, as he is unable to care for himself, and that she has no relatives in Trinidad. He noted that, because of her financial situation, she would probably be unable even to visit the United States therefore unable to see her father and grandmother during their declining years.

Counsel stated that taking the children to Trinidad would pose a severe hardship in view of conditions there. Counsel spoke of the rise in the rate of violent crime in Trinidad and Tobago, including kidnapping, burglaries, and robberies. Counsel stated, "Living in constant fear of kidnapping and violence constitutes more than the usual hardship which would be endured by an individual or family being compelled to live in a foreign country; constant subjection to fear of violence and kidnapping rises to a level that constitutes extreme hardship by any standard."

Counsel also stated that the healthcare available in Trinidad is significantly below U.S. standards. She stated that, for the applicant's wife to move with her children to Trinidad would oblige them all to forego good quality healthcare, and that this would be especially risky for the applicant's wife's older son, who suffers from allergies. He stated that, in addition to the hardship this would impose on the children, it would impose an extreme hardship upon the applicant's wife; that is, the fear and anxiety she would experience from concern for her children's health.

As was noted above, the evidence provided does not demonstrate that quality healthcare is unavailable in Trinidad.

Counsel stated that the applicant's wife's career would also be halted if she went to Trinidad. She stated that the applicant's wife now has a master's degree, and intends to enroll in a PhD program, but that because only one university exists in Trinidad, she would most likely be unable to pursue that goal. Counsel stated that furthering her education is important to the applicant's wife both for her own self-esteem and because she has accumulated considerable debt. Counsel did not indicate the field in which the applicant's wife intends to obtain her doctorate, and did not indicate whether or not such a program is offered in Trinidad, nor did she provide any basis for disparaging the quality of any such program that might exist, other than that Trinidad has only one university.

Counsel stated that if the applicant left the United States and his wife remained in the United States with the children, this would constitute extreme hardship because she might become depressed. Counsel stated that, without the applicant, the applicant's wife would be unable to continue her education while working to provide for herself, her two children, and her father. Counsel stated that, without the applicant, the applicant's wife would be unable to work full-time and to spend

significant time raising her two children. Counsel stated that she would be forced to choose between working full-time and spending less time with her children or spending more time on her children but earning an insufficient amount. Counsel quoted the social worker for the proposition that if the applicant goes to Trinidad his wife will be unable to cope with single motherhood.

Counsel stated that the applicant's wife makes slightly more than \$23,000 annually, and that without the applicant's assistance she "... would be hard-pressed to be able to afford the costs of her family's medical bills, rent and utilities, [her older son's] prescriptions, childcare, and costs of caring for her disabled father, all in addition to the massive debt she is working to repay."

Counsel stated that the applicant and his wife began the process of opening a restaurant in 2004, and that without the applicant, the applicant's wife would not have the time or money to proceed with that plan, the money invested in that enterprise would be lost, and the applicant's wife's debt would be increased.

Counsel noted that the applicant's wife has a personal history of depression and a family history of depression. Counsel asserted that women are at a greater risk for depression and that women in the applicant's wife's age group are at the highest risk. Counsel submitted and cited printouts of web content as support for those propositions. Counsel asserted that moving to a new location can trigger depression. Counsel drew the conclusion that the applicant's wife's mental health would be in danger if she moved to Trinidad.

Counsel stated that healthcare insurance would be unavailable to the applicant's family in Trinidad, but provided no evidence to support that statement. Counsel noted that the applicant and his wife are considering allergy injections for the applicant's stepson, stating that his doctors believe this is the best way to prevent his developing asthma. Counsel asserted that this option would be unavailable in Trinidad, but cited no evidence in support of that assertion. He stated that, as a result, the applicant's wife would suffer extreme hardship.

Counsel stated that the applicant's good character and his service to the community warrant an exercise of discretion in his favor. Counsel cited the various personal, educational, and business reference letters in support of his assessment of the applicant's character and past service. As was noted above, whether to grant waiver as a matter of discretion is an issue not reached until the applicant has proven that the failure to approve the waiver application will cause extreme hardship to a qualifying relative.

The record contains a birth certificate showing that \_\_\_\_\_ was born to the applicant and his wife on July 20, 2005.

The record contains joint 2003, 2004, 2005, and 2006 Form 1040A U.S. Individual Income Tax Returns showing that the applicant and his wife declared total income of \$17,287.72, \$23,215, \$33,459, and \$29,105 during those years, respectively.

The record contains 2004, 2005, and 2006 Schedules C-EZ showing that the applicant earned profit of \$575, \$2,412, and \$198 during those years, respectively, operating a soccer academy. A 2006 Form W-2 Wage and Tax Statement in the record shows that the applicant's wife earned \$21,832 at her job at the West Virginia University Hospital. The provenance of the remaining income during that year is unknown to the AAO. The record contains no W-2 forms to indicate what amount the applicant earned or what amount his wife earned during any of the other years.

A 2004 Schedule C shows that the applicant's wife was proprietor of a restaurant that declared tax and licensure expenses of \$1,500 during that year, but had no other receipts or expenses. The AAO concludes that the restaurant was not yet in operation. Although the 2005 and 2006 tax returns include Schedules C-EZ pertinent to a soccer academy run by the applicant, they contain no indication that the restaurant was then a going concern.

The record contains a letter, dated September 8, 2004, from a human resources staff assistant at a hospital in Morgantown, West Virginia. That staff assistant stated that the applicant had been employed at that hospital since April 27, 2004 and was then working four hours per week at \$7.83 per hour, and further stated that, on September 13, 2004, he would begin working 20 hours per week.

The record contains various notices of overdue bills. Medical bills in the record indicate considerable expenditure on medical care. Student loan documentation shows that the applicant's wife owed almost \$45,000 on March 31, 2005. Another document shows that the applicant had a monthly mortgage payment. Entries on various documents show that the applicant and his wife attempted, at least, to start a restaurant. A printout from the applicant's pharmacy shows that he and his wife are expending a large amount on prescription drugs for the applicant's stepson. A decision by the Social Security Administration shows that an administrative law judge found in favor of the applicant's wife's father and awarded him social security disability payments retroactive to March 28, 2003.

The record contains web content from various internet sources pertinent to Trinidad and Tobago. Some of that web content is pertinent to crime in that country. As to kidnapping, one of the printouts states that kidnapping has soared, from less than ten in 2001 to approximately 150 during 2003 and 2004. It also notes that Trinidad has 1.2 million inhabitants.

The record contains the results of various tests pertaining to the applicant's stepson's allergies. Those documents do indicate sensitivity to various allergens, but do not demonstrate the severity of the stepson's allergies or whether they are amenable to treatment.

The record contains a brief, dated June 11, 2007, which was submitted in support of the second Form I-601 waiver application in this matter, which second waiver application is not the subject of this decision.<sup>4</sup> The representations in the brief will, however, be considered.

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<sup>4</sup> The Form I-601 waiver application with which this appeal is concerned was filed on July 6, 2005, denied on April 27, 2006, and appealed on May 7, 2006. The second Form I-601 waiver application, which is not the subject of today's decision, was filed on June 13, 2007.

Counsel stated that the applicant's wife was then pregnant with a third child, potentially a U.S. citizen, due in August 2007. Counsel further stated that since the unfavorable decision pertinent to the original waiver application, the applicant's wife has been diagnosed with Major Depressive Disorder and was then suffering from a well-documented Major Depressive Episode.

Counsel stated that the applicant's wife has no family support structure other than her husband and her father, who was then in ill health; that she had had severe financial problems and was over \$100,000 in debt; that she had a career in psychology that would be adversely affected by the applicant moving to Trinidad whether or not she accompanied him; and that she hoped to earn a PhD, which goal counsel stated she would be unlikely to be able to pursue in Trinidad.

Counsel stated, "Currently, the family is barely making ends meet on [the applicant's wife's] \$21,736 annual salary." Although the applicant's wife appears to have acquired an MBA in 2005, counsel did not address her prospects of obtaining considerably more remunerative employment based on that degree. Although the applicant and the applicant's wife indicated, in statements dated June 27, 2005, that she imminently intended to pursue a PhD, counsel did not state whether the applicant's wife was then enrolled in such a program, and did not indicate whether the demands of pursuing higher education might be a source of her inability to take on more time-intensive, but potentially more remunerative, employment.

Counsel stated that health care in Trinidad is markedly inferior to that in the United States. Counsel stated that the applicant's wife's career options would be extremely limited there; and that "a professional career is crucial to [the applicant's wife's] well[-]being not only because of her crushing debts and need to provide for her children and father, but also because working in a rewarding career is crucial to her sense of self." Counsel stated that the applicant's wife's "difficult pregnancy and depression" have already placed her under significant physical and psychological strain. Counsel asserted that for all of those reasons the applicant's wife would be at serious risk of a mental health crisis if the application for waiver is not approved.

Counsel noted that the applicant's wife's marriage to the applicant is not short-lived, but had then endured for a full four years, and that, in addition, the relationship existed an additional year prior to their marriage. Counsel stated that for the applicant to depart to Trinidad leaving the family, or for the applicant's wife and the children to accompany him, would cause hardship to the children, which would in turn, cause hardship to the applicant's wife. Counsel further stated that the applicant's wife is only able to hold her job because of the applicant's assistance in caring for the children.

Counsel noted that the applicant's wife relies on her health insurance to manage her pregnancy and mental health issues, and stated that she and her children would lose their medical insurance if the applicant leaves and the applicant's wife either departs with him or loses her job due to her inability to retain it while caring for her children as a single mother. Counsel stated that the applicant's wife has no blood relatives in Trinidad. Counsel mentioned that the applicant has a cousin in Trinidad, but did not discuss what other relatives the applicant might have there. A G-325A Biographic Information form in the record, which the applicant signed on May 23, 2007, states that the

applicant's father and mother then lived in Arima, Trinidad. None of the submissions in the record address whether any of the applicant's relatives would be able to render any type of assistance to the applicant and his family in the event that they moved to Trinidad.

Counsel stated that the rise in the rate of violent crime in Trinidad has rendered Trinidad highly dangerous, which would cause extreme hardship to the applicant's wife if she and her children accompanied the applicant there. Counsel described an incident in which the applicant's cousin and the cousin's son were victims of an armed robbery, and stated that they "had apparently been targeted because [the applicant's aunt] lived in the United States and was, therefore, presumed to be wealthy," and, further, that the applicant's wife and her family would be in danger of being targeted by criminals because of their presumed wealth. Counsel offered no evidence to support the proposition that the robbery of the applicant's relatives was in any way related to their affiliation with the United States.

Counsel stated that the applicant's wife and the children would be in danger in Trinidad because, as United States citizens they are presumed to be rich and would be targeted by criminals. The AAO notes that the statements by the applicant and the applicant's wife are the only evidence in the record in support of that proposition.

In an appeal brief dated July 5, 2006, in addition to reiterating arguments previously made, counsel noted that the decision of denial declined to consider hardship that would result to the applicant's wife if she chose to accompany him to Trinidad. The director cited *Matter of Ige*, 20, I&N 880 (BIA 1994) for the proposition that any such hardship that might result would be a result of the applicant's wife's choice to accompany the applicant, rather than to remain in the United States. Counsel urged that this application of *Ige* was incorrect.

The AAO agrees with counsel that the director's application of *Ige* was overbroad. In the instant case, hardship to the applicant's wife if she accompanies the applicant to Trinidad must certainly be considered, as must hardship to the applicant's wife if she chooses to remain in the United States. In order to prevail in this matter, however, the applicant must show that, if the waiver application is denied and the applicant is removed to Trinidad, then his wife will suffer extreme hardship whether or not she decides to accompany him.

The applicant has demonstrated that his stepson has serious allergies. The applicant, the applicant's wife, and counsel have all asserted that for the child to live in Trinidad would exacerbate those allergies. Although none of the medical evidence in the record directly supports that assertion, evidence was submitted to support that some plants to which the applicant's stepson is sensitive grow in Trinidad, and the AAO notes that the latitude of Trinidad is conducive to year-round, rather than deciduous, growth. The AAO therefore accepts as probable the projection that the applicant's stepson's allergic symptoms would worsen if he moved to Trinidad, although the extent of that exacerbation is not in evidence and is unknown to the AAO. Nevertheless, the AAO accepts that the applicant's wife would suffer some degree of hardship based on the aggravation of her son's allergic reactions.

The evidence presented demonstrates that the applicant and his wife earned total income of only \$33,459, and \$29,105 during 2005 and 2006, and less during previous years. What portion of that income the applicant earned and what portion his wife earned, however, is not in evidence. The only evidence that the applicant earned any income in the United States is the September 8, 2004 letter from an employer stating that he was then earning \$7.83 per hour for four hours of work per week, and would soon be earning the same hourly amount for 20 hours of work per week. His weekly earnings, then, would rise from \$31.32 per week to \$156.60 per week, which equates to \$6,264 per year. The loss of that amount of income does not constitute a hardship which, when combined with the other hardship factors in this case, rises to the level of extreme hardship.

Counsel has also argued, based on assertions of the applicant, his wife, and others, including medical professionals, that a possibility exists, at least, that, if the applicant is removed, his wife would be unable to hold her job, or unable to work as many hours, either because of the effect of the applicant's departure on her emotional state, or because of her need to dedicate more time to caring for her children, or both.

The April 28, 2005 letter from [REDACTED] indicates that for the applicant's wife to raise two children by herself would present an emotional, financial and economic hardship. The record contains no reason to believe that [REDACTED] has any intimate knowledge of the finances of the applicant and his wife, and no indication that [REDACTED] a medical doctor, is expert in those matters. The doctor's basis for her opinion pertinent to financial and economic hardship is unclear. As to financial and economic hardship, [REDACTED]'s opinion will be accorded scant evidentiary weight.

The AAO has no doubt that raising two children as a single mother is a hardship. The central issue is whether it would pose a hardship which, when considered together with the other hardship factors, would rise to the level of extreme hardship.

The letters from the applicant's wife's father, her friends, and her coworkers pertinent to the applicant's wife's anxiety and symptoms of depression are relevant and will be taken into consideration. Those letters, however, contain no indication that the writers have any specialized knowledge of mental health, or any other type of mental health experts, and cannot be accorded great weight. Similarly, the pronouncements of the applicant and the applicant's wife on the subject of her stress and anxiety, and the likely consequences of the applicant's removal to his wife's mental health, will be considered but accorded little weight.

The letters from [REDACTED] and [REDACTED] are the most authoritative evidence in support of the assertion that the applicant's wife's reaction to the applicant's removal would cause her to suffer extreme hardship.

The June 29, 2006 letter from [REDACTED] stated she had seen the applicant's wife twice, that the applicant's wife then had a moderate major depressive disorder, and that being a single parent would be very difficult for the applicant's wife. The February 21, 2007 letter from [REDACTED] indicated that [REDACTED] had continued to see the applicant's wife, but did not indicate with what frequency or how

many times. Further, neither of [REDACTED] letters indicated that the applicant's wife was undergoing any kind of treatment for her alleged major depressive disorder.

[REDACTED] indicated that the applicant's wife was not depressed when he saw her on May 11, 2005. The applicant's wife gave birth to a child on July 20, 2005. On June 29, 2006, [REDACTED] indicated that the onset of the applicant's wife's major depressive disorder was *post partum*, beginning more than ten months prior, that is, before July 25, 2005. The subsequent assertion of [REDACTED], made in the undated letter he wrote after meeting with the applicant's wife on June 5, 2006, that the cause of the applicant's wife's alleged depression is apparently extrinsic, and that it was precipitated, at least in part, by the decision denying the applicant's waiver application, which decision was issued on May 8, 2006, is questionable.

The applicant's wife first saw [REDACTED] on May 11, 2005. Although [REDACTED] and [REDACTED] have both stated that antidepressant therapy is being considered, and [REDACTED] stated that psychotherapy "is recommended," the record still contains no evidence that the applicant's wife has ever received any treatment for her alleged depression, which [REDACTED] implied is a life-threatening condition.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted reports appear to be based on very few interviews of the applicant and the applicant's wife conducted by two social workers. The record fails to reflect an ongoing relationship with the applicant's wife or any history of treatment for the disorder suffered by the applicant's wife. Moreover, the conclusions reached in the submitted report, being based largely on self-reporting interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional. The applicant and the applicant's wife appear to have attended meetings with the social workers only as necessary to produce reports for use as evidence in this proceeding, rather than in order to pursue treatment. The conclusions of [REDACTED] and [REDACTED] are speculative, and the value of their reports is diminished as a consequence.

For reasons discussed above, the AAO finds that the applicant has not demonstrated that his wife would be unable to pursue her chosen profession in Trinidad. Also, although the applicant stated that few opportunities exist in Trinidad, no evidence on that point was provided, and the applicant has not demonstrated that he would be unlikely to find suitable employment. Similarly, the applicant has not demonstrated that his wife would be unable to locate a suitable PhD program in Trinidad, and, in any event, as she stated, on June 27, 2005, that she anticipated entering such a program.

Given the applicant's wife's father's compendium of illnesses, the AAO finds that, for the applicant's wife to abandon him and go to Trinidad to live would cause her hardship. Again, the issue is whether the aggregated hardship factors meet the standard of "extreme" hardship, which is the threshold required by section 212(i)(1) of the Act.

As was noted above, the exacerbation of the applicant's stepson's allergies that would likely result from his moving to Trinidad would also cause some degree of hardship to the applicant's wife.

Whether all of Trinidad is engulfed in a crime wave, or whether the applicant and his family would be obliged, if his family accompanied him to Trinidad, to live in a portion of the country that is so engulfed, is unclear. Whether or not the applicant's wife's perception of the dangers of living in Trinidad is well-founded is also unclear. Although the murder rate in Trinidad is high, the prevalence of violent crime against individuals such as the applicant and his family has not been adequately demonstrated. Nevertheless, Trinidad has a high rate of murder and some other violent crimes, and the applicant's wife perception of Trinidad as being unreasonably dangerous would cause her some hardship if she were obliged to move there, whether or not that perception is well-founded.

The applicant and his wife have indicated that the applicant's stepson would not have access to educational opportunities in Trinidad as good as those available to him in the United States, but did not cite any evidence in support of that assertion. Further, as was stated in *Matter of Kim*, 15 I&N Dec. 88, (BIA 1974), that educational opportunities are better in the United States than in the applicant's homeland does not establish extreme hardship. The AAO will consider, however, that the diminished educational opportunities that might be available to her children could cause the applicant's wife some hardship if she and her children were to accompany the applicant to live in Trinidad.

The AAO finds that the various hardships that the applicant's wife would suffer if she went to Trinidad with her children, including her inability to care for her father, her inability to see her father and grandmother in what may be the last years of their lives, the aggravation of her son's allergic conditions, her perception of an unreasonably high probability that she or her family members would be victims of violent crime in Trinidad, and the possibly diminished educational opportunities available to her children in Trinidad, would cause her extreme hardship. The remaining issue is whether she would suffer extreme hardship if the applicant were removed to Trinidad and she remained in the United States with her children.

If the applicant were removed and the applicant's wife remained in the United States, the applicant's wife would certainly suffer some hardship. She would be obliged to forego his company most of the time, even if she were able to visit Trinidad with her children regularly. She would not have his assistance caring for the children and caring for her father. Although the record, as was noted above, contains very little evidence that the applicant himself had income in the United States, if he were to go to Trinidad, she would not have the benefit of whatever income he might have earned if he had remained in the United States. He might or might not be able to generate sufficient income in Trinidad to provide his wife with financial assistance.

The most recent tax return in the record shows that the applicant's wife earns only slightly more than \$29,000 per year. The AAO is unable to determine, from the evidence, whether the applicant himself contributed to that income. Further, although that income is not generous, the record contains no list of recurring monthly expenses or any evidence from which the AAO might conclude

that it is insufficient for the applicant's wife to support herself and her three children<sup>5</sup> while still rendering some assistance to her father. Further still, the AAO is not convinced that with her MBA and possibly a PhD, the applicant's wife would be unable to earn a larger income and meet her financial obligations.

Even if, for reasons unknown to the AAO, the applicant's wife's credentials cannot draw any higher salary than she now earns, the applicant did not explore the possibility that his wife could reduce her expenses.

The record suggests that the applicant has very loving and devoted family members who are extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

As was noted in *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994), in speaking of suspension of deportation,

The Supreme Court has held that a narrow interpretation of extreme hardship is consistent with the exceptional nature of the suspension remedy. *INS v. Jong Ha Wang*, 450 U.S. 139 1981; see also *Hernandez-Cordero v. United States INS*, 819 F.2d 558 (5<sup>th</sup> Cir. 1987).

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<sup>5</sup> A birth certificate in the record shows that, on August 30, 2007, a third child was born to the applicant and his wife.

The extreme hardship standard that the applicant must meet in order to qualify for the remedy sought in the instant case is similarly restrictive. “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). Even a significant reduction in the standard of living is not by itself a ground for relief. *Ramirez-Durazo v. INS*, 794 F.2d 491 (9<sup>th</sup> Cir. 1986); *Santana-Figueroa v. INS*, 644 F.2d 1354 (9<sup>th</sup> Cir. 1981).

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s wife faces extreme hardship if the applicant is removed from the United States and she remains. Rather, the record suggests that she will face the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i) and under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1186(a)(9)(B)(v) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.