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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAY 12 2008**

IN RE: [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 PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The applicant is a native of Tajikistan (former U.S.S.R.) and citizen of Israel who was found to be inadmissible to the United States under 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. The applicant originally entered the United States on June 3, 1994 as a visitor for pleasure with permission to remain in the United States until December 2, 1994. The applicant remained in the United States until 2001 and returned with an advance parole document on May 30, 2001. The applicant is married to a U.S. Citizen and has a U.S. Citizen daughter and is the beneficiary of an approved Petition for Alien Relative. She 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) to remain in the United States with her spouse.

The service center director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Service Center Director Decision* dated March 21, 2006.

On appeal, counsel asserts that the applicant's U.S. Citizen spouse would suffer extreme hardship if the applicant were removed from the United States. In support of this assertion counsel submitted additional evidence, including an affidavit from the applicant's husband, a letter from a doctor who has treated the applicant's husband for depression, and records of his treatment for depression from 2001 to 2004. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

**(B) ALIENS UNLAWFULLY PRESENT.-**

(i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

...

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver.-The Attorney General 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 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 regarding a waiver under this clause.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(9)(B)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a sixty-four year-old native of Tajikistan and citizen of Israel who has resided in the United States since June 1994, when she was admitted as a visitor for pleasure. She filed an application for asylum in 1994, which she withdrew on January 26, 1998 because her husband had filed a Petition for Alien relative (Form I-130) for her. The AAO notes that the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on February 17, 1998, but that application was not properly filed because her husband was not a U.S. Citizen and no visa number was available to her at the time. The applicant therefore began to accrue unlawful presence when she withdrew her asylum application on January 26, 1998 and continued to be unlawfully present until November 29, 1999, when her U.S. citizen daughter filed a new Petition for Alien Relative on her behalf and she simultaneously filed a new application for adjustment of status. The applicant therefore accrued over one year of unlawful presence in the United States from January 26, 1998 to November 29, 1999. The applicant then departed the United States and was readmitted with an advance parole document on two occasions, once in 2000 and again on May 30, 2001.

The applicant's husband is a seventy year-old native of Uzbekistan (former U.S.S.R.) and naturalized U.S. Citizen who has resided in the United States since 1995. Counsel asserts that the applicant's husband would suffer extreme emotional and physical hardship if the applicant were removed from the United States. Evidence submitted with the waiver application includes an affidavit from the applicant's husband stating that he has been treated for depression for several years and has had "some medical concerns or issues that might adversely effect (sic) [him] were [he] compelled to leave the U.S." *Affidavit of* [redacted] dated April

2006. Counsel also submitted with the appeal a letter from a physician who has been treating the applicant's husband for major depression since 2001. The letter states,

He carries the diagnosis Major Depressive Disorder. Recurrent. Severe. . . Patient requires on going (sic) medical attention and supervision. Patient's depression in many instances is the result of tremendous stress due to the loss of his first wife. This loss was fundamentally traumatic. The patient relies wholly on his present spouse for emotional, moral, and physical support. Separation from his present wife would have a detrimental effect. *Letter from [REDACTED] Executive Director, Community Related Services, Exhibit AA, dated April 17, 2006.*

In addition to the letter from [REDACTED] counsel submitted several "progress notes" from a doctor at Community Related Services who treated the applicant's husband for major depression from 2001 to 2004. The notes describe the applicant's husband's mood and speech during his visits as well as his complaints of anxiety and physical ailments including headaches, poor sleep, and difficulty concentrating. *See Progress Notes prepared by [REDACTED] Exhibits A to X.* the notes indicate the applicant's husband was prescribed various medications, including Remeron and Almatriptan, and also received "supportive psychotherapy."

A review of the evidence on the record indicates that the applicant's husband has suffered from major depression and has been treated for this condition for several years. A doctor from Community Related Services, a facility where the applicant's husband has received psychiatric treatment since 2001, states that the applicant's husband relies on the applicant for emotional and physical support and that separation from the applicant would therefore be detrimental to his mental health. In light of this serious mental health condition and the applicant's husband's reliance on his wife, it appears that he would suffer extreme hardship, beyond the common results of deportation, if the applicant were removed from the United States and he remained in the United States.

An affidavit from the applicant's husband states that he has lived in the United States since 1995 and has close family ties, including three sons, two daughters, two brothers and two sisters, all of whom are U.S. Citizens. He states that he has been treated for depression since 1997 and would "miss out on family celebrations and religious happenings with [his] family if [he] had to leave the U.S." *Affidavit of [REDACTED] dated April 2006.* The record contains no evidence documenting the family ties mentioned by the applicant's husband, such as birth certificates or certificates of naturalization and affidavits or other evidence describing how much contact these relatives have with the applicant's husband. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The evidence on the record does not establish that the emotional effects of separation from his family members in the United States would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of a relative's removal or exclusion. Although the depth of his distress over the prospect of being separated from his family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a

waiver of inadmissibility to cases of “*extreme hardship*,” Congress did not intend that a waiver be granted in every case where a qualifying relationship or family ties exist.

The record contains no evidence indicating that the applicant’s husband cannot relocate to Israel with the applicant or that doing so would cause him to suffer extreme hardship. The applicant’s husband states that [REDACTED] explains in her letter his “diagnosis and prognosis were [he] compelled to leave the U.S. to stay with [his] wife [REDACTED].” See affidavit of [REDACTED] dated April 2006. The letter prepared by [REDACTED] does not, however, discuss how leaving the United States to reside with his wife would affect the applicant’s husband. It states only that separation from his wife would have a detrimental effect on the applicant’s husband. There is also no evidence on the record concerning the availability in Israel of psychiatric treatment or medication for his condition or otherwise supporting counsel’s assertion that the applicant’s husband would suffer extreme hardship if he relocated to Israel with the applicant. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

It appears from the record that any physical or emotional hardship to the applicant’s husband would be the type of hardship that family members would normally suffer as a result of removal or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991) (stating that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported); *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).

A review of the documentation in the record reflects that the applicant has failed to show that the hardships faced by the qualifying relative if he relocated to Israel with the applicant, when considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing 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.