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U.S. Citizenship  
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FILE: [REDACTED] Office: CLEVELAND (COLUMBUS), OH

Date: APR 22 2009

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT:  
[REDACTED]

**INSTRUCTIONS:**

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).

John F. Grissom  
Acting Chief, Administrative Appeals Office

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

The record reflects that the applicant, a native and citizen of Hungary, initially entered the United States as a visitor in March 1998 with permission to remain for six months. The applicant remained in the United States beyond his period of authorized stay. He subsequently departed the United States in February 2000. The applicant 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.<sup>1</sup> The applicant seeks a waiver of inadmissibility in order to remain in the United States with his U.S. citizen spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated January 11, 2007.

In support of the appeal, counsel for the applicant submits a brief, dated February 8, 2007, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) 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 Attorney General (Secretary) that the refusal of

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<sup>1</sup> The applicant does not contest the district director's finding of inadmissibility. Rather, he is filing for a waiver of inadmissibility.

admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien....

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. The factors include 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.

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).

The first step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse would encounter extreme hardship if she relocated abroad to reside with the applicant due to his inadmissibility. The applicant's spouse asserts that she would suffer emotional, psychological, financial and professional hardship were she to relocate abroad with the applicant. In a declaration, she asserts that she would suffer extreme emotional hardship as she would be forced to leave her U.S. citizen mother, who is disabled as a result of a gunshot wound that led to medical complications, including chronic pain and minimum mobility, and who depends on the applicant's spouse for her daily physical, emotional and financial care. The record also indicates that the applicant's spouse's mother suffered a stroke in June 2006. See *Letter from [REDACTED] St. Vincent Charity Hospital*, dated July 21, 2006. Moreover, the applicant's spouse asserts that she would suffer financial and professional hardship in Hungary due to the fact that she does not speak the language and would thus find difficulties in obtaining gainful employment and in turn, would experience a lower standard of living. In addition, the record establishes that the applicant's spouse has been gainfully employed and has obtained professional advancement; a relocation abroad would mean career disruption. Finally, the applicant's spouse asserts that she would face societal abuses and discrimination and sexual harassment in Hungary. *Affidavit of [REDACTED] dated August 5, 2006.*

Counsel has provided documentation to corroborate the applicant's spouse's statements, including medical records detailing the applicant's spouse's mother's medical conditions and an affidavit from the applicant's spouse's mother detailing her complete dependence on her daughter for her daily care. In addition, documentation has been provided from the applicant's spouse's siblings, confirming their inability to care for their mother due to their own obligations. Moreover, a letter

has been provided outlining the applicant's spouse's current gainful employment and progression from Sales Consultant to Business Manager. See *Letter from [REDACTED] Controller, Lexus of [REDACTED]* dated August 4, 2006. Finally, the U.S. Department of State confirms the statements made by the applicant's spouse with respect to societal discrimination and abuses and sexual harassment in Hungary. See *2008 Human Rights Report-Hungary, U.S. Department of State*, dated February 25, 2009.

Based on the concerns outlined above by the applicant's spouse with respect to her mother's daily care, the applicant's spouse's close relationship and unique bond with her disabled mother, long-term disruption of her career, complete unfamiliarity with the country and its culture, language and customs, financial hardship and discrimination based on her ethnicity and gender, the AAO concludes that the applicant's U.S. citizen spouse would face hardship beyond that normally expected of one facing relocation abroad based on the removal of a spouse if she were to live with the applicant in Hungary.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she remains in the United States while the applicant relocates abroad based on the denial of the waiver request. In a declaration, the applicant's spouse asserts that she will suffer emotional and financial hardship. Specifically, she will face emotional hardship due to the close relationship she has with the applicant, and she will suffer as she will have to give up her chance to have a family due to the applicant's long-term physical absence. Moreover, the applicant's spouse contends that she and her husband are joint owners of a small roofing business—she handles the administrative/business matters and the applicant handles the roofing work-- and that if the applicant relocates abroad, the applicant's spouse may face legal problems as she will be unable to deliver on service agreements. Finally, the applicant's spouse asserts that she and her husband recently purchased a house and without the applicant's income, she will suffer financial hardship. *Supra* at 1-2.

A psychological evaluation was submitted to substantiate the applicant's spouse's anxiety and depression with respect to her husband's immigration situation. See *Confidential Psychosocial Evaluation from [REDACTED]*

It has not been established that the applicant's spouse will suffer extreme emotional hardship were she to remain in the United States while her spouse relocates abroad. Although the input of any professional is respected and valuable, the AAO notes that the submitted evaluation fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. Moreover, the diagnosis of anxiety and depression, being based on two sessions three days apart, does not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship. In addition, while the AAO sympathizes with the applicant and his spouse's desire to have children, all couples separated by removal have to make alternate arrangements if they want to conceive. It has not been documented that such arrangements rise to the level of extreme hardship.

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary 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 did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond 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). "[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).

As for the financial hardship referenced, the AAO notes that courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9<sup>th</sup> Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

In this case, the record indicates that the applicant's spouse is gainfully employed, earning over \$54,000 per year. See *Letter from* [REDACTED], dated November 29, 2005. Said figure is well over the poverty guidelines and it has not been established that such income, without additional financial contributions from the applicant and/or the roofing business, would cause the applicant's spouse extreme financial hardship. In addition, the applicant has failed to document that he would be unable to obtain gainful employment in Hungary, thereby assisting his spouse financially should the need arise. Finally, it has not been established that the applicant's and his spouse's roofing business, which was established in May 2006, can not continue to remain viable by assigning the roofing responsibilities to a third party or alternatively, by selling

the business altogether. 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 record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships she would face rise to the level of "extreme" as contemplated by statute and case law. 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. The waiver application is denied.