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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: ATHENS, GREECE Date: MAR 16 2010

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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:

[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, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Athens, Greece. The matter 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 Lebanon. The applicant was found 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 a period of one year or more. The applicant is married to a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to return to the United States and reside with his wife.

The field office director concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Decision of the Field Office Director* dated July 1, 2008.

On appeal, counsel for the applicant asserts that the applicant's wife would suffer extreme hardship if she relocated to Lebanon because of dangerous conditions there and refers to a travel warning issued by the U.S. Department of State advising U.S. Citizens to avoid unnecessary travel to Lebanon. *Counsel's Brief in Support of Appeal* at 2. Counsel further claims that the applicant's wife would suffer hardship if she relocated to Lebanon because she would be separated from her two older sons from a prior marriage and would have difficulty finding employment and adjusting to life there because she does not speak or read Arabic. *Brief* at 1, 3. Counsel additionally asserts that if the applicant's wife remained in the United States without the applicant, their seven year-old daughter, who has been in Lebanon with her father for almost three years, would suffer extreme hardship. *Brief* at 1-2. Specifically, counsel states that the applicant's daughter is suffering extreme emotional hardship that is making her physically ill and she wants to return to be with her mother but does not want to leave her father behind. *Brief* at 2. In support of the waiver application and appeal counsel submitted a letter from the applicant's daughter, letters from the applicant's daughter's pediatrician and from her kindergarten teacher, a U.S. State Department Travel Warning for Lebanon, letters from the applicant's wife and her sons, letters from the applicant's former employer in the United States, and letters from relatives of the applicant's wife. 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:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
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> > (II) Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

. . . .

(v) Waiver. – The Attorney General [now Secretary, Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record contains several references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

Section 212(a)(9)(B)(v) of the Act provides that a waiver of the bar to admission 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. In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), held that, "the most important single hardship factor may be the separation of the alien from family living in the United States," and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.)

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 (9th 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 (9th 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. In *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. 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 thirty-eight year-old native and citizen of Lebanon who resided in the United States from November 1999 to April 2007, when he returned to Lebanon. The applicant submitted an application to Register Permanent Residence or Adjust Status (Form I-485) on October 25, 2002 and indicated that he had been paroled into the United States, but the record contains no documentation indicating the applicant was inspected and paroled. The application for adjustment of status was withdrawn on April 15, 2004, and the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the Untied States for a period of one year or more. The applicant married his wife, a forty-six year-old native of Puerto Rico and citizen of the United States, on May 16, 2001. The applicant resides in Lebanon with their daughter and his wife resides in Dearborn, Michigan with their son.

Counsel asserts that the applicant's wife would suffer extreme hardship if she relocated to Lebanon with the applicant because she would be in danger due to threats against U.S. Citizens, she would be separated from family members in the United States, and she would have difficulty adjusting to life there because she does not speak the language. As stated by counsel, the U.S. Department of State issued a Travel Warning for Lebanon in 2008, and the AAO notes that a more recent warning against travel to Lebanon has been issued. The U.S. Department of State released the following Travel Warning for Lebanon on September 29, 2009:

> The Department of State continues to warn U.S. citizens to avoid all travel to Lebanon due to current safety and security concerns. Americans living and working in Lebanon should understand that they accept risks in remaining and should carefully consider those risks. This supersedes the Travel Warning issued on May 13, 2009 and updates information on security threats and special circumstances in Lebanon.
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> While Lebanon enjoys periods of relative calm, the potential for a spontaneous upsurge in violence is real. Lebanese government authorities are not able to guarantee protection for citizens or visitors to the country should violence erupt suddenly. Access to borders and ports can be interrupted with little or no warning. Public demonstrations occur frequently. Under such circumstances, the ability of U.S. government personnel to reach travelers or provide emergency services may at times be severely limited.
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> Americans have been the targets of numerous terrorist attacks in Lebanon in the past, and the threat of anti-Western terrorist activity continues to exist in Lebanon. On January 15, 2008, a U.S. Embassy vehicle was targeted in a bomb attack that killed three Lebanese bystanders. U.S. citizens traveling or residing in Lebanon despite

> this Travel Warning should keep a low profile, varying times and routes for all required travel. Americans should also pay close attention to their personal security at locations where Westerners are generally known to congregate, and should avoid *demonstrations and large gatherings.*
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> . . . .
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> U.S. citizens traveling or resident in Lebanon despite this Travel Warning should be aware that the U.S. Embassy's ability to reach all areas of Lebanon is limited. The Embassy cannot guarantee that Embassy employees will be able to render assistance to U.S. citizens in many areas of the country.

The applicant's wife has resided in the United States and Puerto Rico her entire life and has close family ties in the United States, including her two adult children and her siblings. Further, the U.S. government has warned U.S. citizen against unnecessary travel to Lebanon because of terrorist threats and other security concerns. Under these circumstances, the hardship caused to the applicant's wife by severing her ties to the United States and having to adapt to an unfamiliar culture and seek employment without knowledge of the native language, combined with the threat of terrorist groups that may target U.S. Citizens, would amount to extreme hardship for the applicant's wife if she were to relocate to Lebanon.

Counsel asserts that the applicant's daughter is suffering hardship due to separation from her mother and states that "the prolonged separation from her mother; and the impossible thought of leaving her father behind have made her physically ill." *Brief* at 2. A letter from her pediatrician in Lebanon states that the applicant's daughter's health is being affected by being separated from her mother and brothers in the United States, and she cannot understand why her father may not be permitted to return to the United States. The letter states, '[redacted] doesn't want to leave her father behind although she is anxious to see her mother and brothers. Please take my opinion, as a pediatrician, in make (sic) a decision on [redacted] waiver." *Letter from* [redacted] dated June 8, 2008. A more recent letter states that she suffers from chronic psychological problems, difficulty breathing, a weak immune system and sleep difficulty due to separation from her mother. *Letter from* [redacted] dated April 3, 2009. A letter from [redacted] kindergarten teacher states that she cries because she wants to go to the United States to be with her mother and brother, but loves her father dearly and has become quieter in school since learning that he could not go back. *Letter from* [redacted] dated June 11, 2008.

Although the emotional effects of a serious medical condition of a qualifying relative's child could be considered in assessing a claim of extreme hardship, the evidence in the present case does not establish that the applicant's daughter is suffering from such a condition. The letters from the applicant's daughter's pediatrician provide no specific diagnosis or detail about the nature of her condition, and do not establish that she suffers from a significant, ongoing medical or psychological condition that would result in extreme hardship to her mother. Further, although the physician treating the applicant's daughter states that she suffers from psychological problems due to

separation from her mother, the AAO notes that she is a U.S. Citizen and could return to the United States. The applicant's wife states that they decided to let their daughter go to Lebanon with her father because she is very attached to him, but counsel asserts that this decision was made because they believed he would have to remain in Lebanon for a year or less. Counsel states that at the age of seven the applicant's daughter is too young to make the trip back to the United States by herself, but there is no indication on the record that the applicant's wife cannot bring her back to the United States if she is suffering hardship from being separated from her mother and brother.

Counsel asserts that the applicant's wife is suffering emotional hardship due to separation from the applicant. As noted above, the record is insufficient to establish that any emotional difficulties she is experiencing are more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's exclusion or removal. Although the depth of her distress caused by the prospect of separation from her husband is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation 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 exists.

The applicant's wife states that she does not work and the applicant is the sole provider for the family. The record contains no evidence of unusual circumstances that would prevent the applicant's wife from working and supporting herself financially. Although having to live without the applicant's income would likely have a negative effect on the financial situation of the applicant's wife, the evidence on the record is insufficient to establish that the financial impact would rise to the level of extreme hardship for the applicant's wife. *See INS v. Jong Ha Wang*, *supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The record reviewed in its entirety does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission and she remains in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining "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 (9th Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that any hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

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.