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

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FILE:



Office: VIENNA

Date:

MAR 30 2010

IN RE:



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

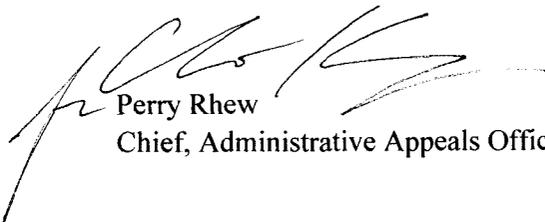
ON BEHALF OF APPLICANT:



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).



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Vienna. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Romania who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife.

The officer-in-charge found that the applicant failed to establish extreme hardship to his wife and denied the Form I-601 application for a waiver accordingly. *Decision of the Officer-in-Charge*, dated July 23, 2007.

On appeal, counsel for the applicant asserts that the applicant's wife will experience extreme hardship if the applicant is prohibited from residing in the United States. *Brief from Counsel*, dated August 17, 2007.

The record contains, in pertinent part, a brief and correspondence from counsel; statements from the applicant and his wife; copies of photographs of the applicant and his wife; medical documentation for the applicant's wife; a letter from a licensed clinical social worker regarding the applicant's wife; documentation of the applicant's wife's health insurance; reports on health care in Romania; educational and vocational certificates for the applicant's wife; letters from the applicant's wife's friends, coworkers, and family members; copies of birth and marriage records for the applicant and his wife; copies of naturalization certificates for the applicant's wife, mother-in-law, and father-in-law; a letter from [REDACTED] documentation regarding the applicant's proceedings in Immigration Court and before the United States Board of Immigration Appeals (BIA), and; documentation regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(B) Aliens Unlawfully Present.-

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

....

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

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the 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 reflects that the applicant entered the United States in B-2 nonimmigrant status as a visitor for pleasure on June 15, 1995 with authorization to remain until December 14, 1995. On or about April 17, 1996 he filed a Form I-589 application for asylum and withholding of deportation. An Immigration Judge denied the application on March 27, 1997 and ordered the applicant to be removed. The BIA dismissed the applicant's subsequent appeal on January 27, 1999.

The applicant married his U.S. citizen wife on March 28, 2003. The applicant's wife filed a Form I-130 relative petition on his behalf on or about October 9, 2003, yet she missed her scheduled interview. The applicant departed the United States in or about August 2005. On April 6, 2006, the applicant's wife filed a new Form I-130 relative petition, which was approved on July 18, 2006.

Based on the foregoing, the applicant accrued unlawful presence from January 27, 1999, the date the BIA dismissed his appeal, until August 2005 when he departed the United States. This period totals over five years. The applicant now seeks admission as an immigrant pursuant to the approved Form I-130 relative petition on his behalf. Thus, the applicant was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The applicant does not contest his inadmissibility on appeal.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

The applicant's wife states that she immigrated to the United States in 1984 at age nine. *Statement from the Applicant's Wife*, dated August 11, 2007. She explains that she performed well in school, obtained a bachelors degree in chemistry, and she seeks to continue her education in medical school to become a pharmacist. *Id.* at 1. She asserts that she cannot continue her educational goals due to the applicant's absence and her need for his financial support. *Id.* at 1, 4.

The applicant's wife states that she was diagnosed with an enlarged uterus due to multiple fibroids, and she received treatment and ultimately surgery to remove them. *Id.* at 4. She explains that the applicant cared for her during her recovery. *Id.* The applicant's wife indicates that she wishes to have healthy pregnancies and healthy babies, and that she can only do so if she continues to receive treatment in the United States. *Id.* at 3. The applicant's wife reported that a doctor told her that "beside[s] several fibroids present in [her] uterus [she has] other medical problems that will make conceiving difficult or impossible." *Prior Statement from the Applicant's Wife*, dated February 22, 2007. She stated that a doctor told her that she must conceive soon, as she requires additional surgery, which will remove her uterus thus ending her opportunity to conceive a child. *Id.* at 1.

The applicant's wife indicates that she continued to hold two jobs after her surgery due to the fact that the applicant was unable to obtain authorization for employment. *Statement from the Applicant's Wife* at 2. She states that she and the applicant sold their home to fund airline tickets so that they could travel to Romania. *Id.* She contends that she would face economic hardship in Romania, as there are few employment opportunities and low wages. *Id.* at 3.

The applicant's wife indicates that she cares for her elderly mother and father, ages 71 and 76 respectively. *Id.* She notes that she purchases household and personal supplies for them and takes them to doctor's appointments. *Id.*

The applicant's wife adds that she was the victim of vandalism and burglary, thus she does not feel safe living alone. *Id.* She asserted that her life was in danger when a juvenile shot a paintball gun at her door and as a result of a burglary attempt at her home while she slept. *Prior Statement from the Applicant's Wife* at 1. She states that she decided to temporarily reside with her brother and his family due to her security concerns. *Id.*

The applicant's wife states that she is close with the applicant and that he is caring and sensitive to her. *Statement from the Applicant's Wife* at 2. The applicant's wife expresses that she is experiencing significant emotional hardship due to separation from the applicant and their present circumstances. *Id.* at 3. She states that her work performance has suffered and she was treated in an emergency room due to an increased heart rate and poor emotional state. *Id.* She described other physical and emotional symptoms, including hair loss, rashes, reduced appetite, depression, and anxiety. *Id.*; *Statement from the Applicant's Wife*, dated June 18, 2007.

The applicant's wife states that she visited the applicant in Romania for four months in 2005, one month in March 2006, one month in August 2006, and one month in February 2007. *Prior Statement from the Applicant's Wife* at 1.

The applicant describes the history of his arrival to the United States and his relationship with his wife. *Statement from the Applicant*, dated August 10, 2007. The applicant explains that his absence has caused significant hardship for his wife. *Id.* at 3. He expresses that he and his wife wish to have children, and that his absence delays the opportunity. *Id.* He states that they previously attempted to conceive a child during the years prior to his departure. *Id.* The applicant indicates that he wishes to be with his wife so he can support her emotionally and financially. *Id.*

The applicant submits letters from his wife's coworkers and friends who attest to her strong work ethic and caring nature. *Letters from the Applicant's Wife's Coworkers and Friends*, dated August 2007. They state that the applicant's wife is enduring significant emotional and physical hardship due to separation from the applicant. *Id.* They provide that the applicant's wife wishes to further her education to become a pharmacist, and that she wishes to have children. *Id.*

The applicant provides medical documentation to show that his wife was diagnosed with uterine fibroids, and on July 9, 2003 she underwent a surgical procedure (a myomectomy) to remove them. *Record of Applicant's Wife's Surgery*, dated July 9, 2003.

The applicant submits a letter from a nurse practitioner, [REDACTED] who reports that the applicant's wife is under her care. *Letter from [REDACTED]*, undated. Ms. [REDACTED] provides that the applicant's wife was not a patient of her practice at the time of the applicant's wife's myomectomy, and that she has no personal knowledge of the extent the applicant's wife's fibroids affected her uterus. *Id.* at 1. She indicates that it is a known fact that any surgery on the uterus could complicate a pregnancy and increase the risk of the inability to carry a pregnancy to term. *Id.* [REDACTED] states that the applicant's wife's fibroids have returned and that she desires a pregnancy. *Id.* She recommends that the applicant's wife conceive as soon as possible. *Id.* She states that the applicant's wife's pregnancy would be monitored as a high risk pregnancy due to her history of surgery. *Id.*

The applicant submits documentation regarding health care services in Romania. The applicant provides a report that states that breastfeeding is lacking and the number of maternal deaths is higher than in other Eastern and Central European countries, in part due to the fact that many women failed to seek prenatal care. *UNICEF Report on Breastfeeding in Romania*, undated. The applicant submits a report that indicates that health insurance in Romania fails to cover "certain high-tech health-care services," and that at least half of users report making out-of-pocket expenditures. *Romania Country Commercial Guide FY2001 Health Care Services, U.S. Department of Commerce*, undated.

The applicant further submits documentation to show that his wife was admitted to an emergency room on July 30, 2007 due to a possible anxiety attack. *Report from [REDACTED]* dated July

30, 2007. She was diagnosed with “anxiety state and tension headache,” and given medication. *Id.* at 2.

The applicant provides a letter from another physician, [REDACTED] who states that the applicant’s wife was prescribed Cymbalta for depression, Fioricet for headaches, and Flexeril and Naprosyn for muscle spasms. *Letter from [REDACTED]*, dated August 14, 2007. He stated that the applicant’s wife had a return visit scheduled in two weeks. *Id.* at 1.

The applicant submits a letter from a licensed clinical social worker, [REDACTED] who reports that the applicant’s wife is attached to the applicant and her family members and she has difficulty functioning independently. *Letter from Social Worker*, dated August 16, 2007. She indicates that the applicant’s wife’s mental stability may deteriorate rapidly without the applicant’s presence, which may affect her work performance. *Id.* at 2. She notes that the applicant’s wife has further appointments scheduled with her. *Id.*

The applicant presents a letter from a physician, [REDACTED] who states that the applicant’s mother-and father-in-law depend on their children to transport them to and from doctor’s appointments. *Letter from [REDACTED]* dated August 14, 2007.

The applicant’s father-in-law states that he suffered a heart attack in 2002 and that the applicant’s wife was very helpful to him during his stay in the hospital and recovery. *Letter from the Applicant’s Father-in-law*, dated August 10, 2007. He attests that the applicant’s wife is experiencing significant emotional hardship due to the applicant’s absence. *Id.* at 1-2.

The applicant’s mother-in-law provides that she had knee-replacement surgery on both knees, and that the applicant’s wife has been very helpful to her. *Letter from the Applicant’s Mother-in-law*, dated August 10, 2007. She notes that the applicant’s wife purchases things they need around the house, such as body washes, detergents, fruit, and drinks. *Id.* at 1. She attests that the applicant’s wife is suffering emotional hardship without the applicant, in part because the applicant and his wife wish to have three children. *Id.* at 2. She notes that her blood pressure has risen due to concern for the applicant’s wife. *Id.*

Counsel asserts that the applicant’s wife’s ability to have children will be significantly reduced if she is forced to reside in Romania. *Brief from Counsel*, at 2, dated August 18, 2007. Counsel contends that the applicant’s wife was not able to conceive a child prior to her myomectomy due to the presence of large fibroids. *Id.* Counsel states that the applicant’s wife’s child-bearing years are “quickly slipping away,” and that she requires medical supervision due to her history of large fibroids, a likelihood of recurring fibroids, reduced possibility of conception due to fibroids, and a risk of spontaneous abortion. *Id.*

Counsel notes that the applicant’s wife has medical insurance due to her employment with pharmacies at Walmart and Gwinnett Medical Center. *Id.* at 4. Counsel asserts that she would lose her medical insurance and lack access to competent medical care should she relocate to Romania. *Id.*

Counsel asserts that the applicant's wife is enduring financial hardship without the applicant's assistance, as she must pay for the costs of maintaining a long-distance relationship as well as legal fees. *Id.* at 5. He asserts that the applicant's wife moved to Romania to help the applicant obtain permanent residence in the United States, but that she returned to the United States due to financial difficulties. *Id.* Counsel contends that the applicant's wife must help support her parents, pay rent to her brother, and make payments on a car note. *Id.* Counsel states that the applicant's wife is unable to continue her education without the applicant's financial support. *Id.* at 6.

Counsel asserts that the applicant's mother- and father-in-law have no pension, and only savings of approximately \$2,000 as well as approximately \$400 per month in social security income. *Id.* at 7. Counsel contends that the applicant's wife's economic support to her parents is "imperative for them not to become a public charge to the government." *Id.* at 8.

Upon review, the applicant has not established that his wife will suffer extreme hardship if he is prohibited from entering the United States at the present time. The applicant has not shown that his wife will experience extreme hardship if she remains in the United States for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant's wife expresses that she wishes to have children, and counsel asserts that denial of the present waiver application will result in the applicant's wife losing the opportunity. It is first noted that the applicant's wife is not currently pregnant. The majority of the medical documents for the applicant's wife discuss the increased complications and risks she would face if she became pregnant due to her medical condition and age. However, denial of the present application does not have an impact on a present pregnancy, and thus it does not create a health risk or medical complications for the applicant's wife.

The medical documentation in the record shows that it will be difficult for the applicant's wife to conceive a child irrespective of her location, thus she will face the same physical complications whether she is in the United States or Romania. Accordingly, the applicant has not shown that the applicant's absence from the United States will impact his wife's physical capability to conceive.

The applicant's wife stated that she visited the applicant for a total of seven months between August 2005 and February 2007. She did not contend that she is unable to continue visiting the applicant. While counsel asserted that the applicant's wife returned to the United States after her first four-month visit due to financial concerns, the applicant or his wife did not make such a claim. Nor has the applicant provided any financial documentation for himself or his wife to show that his wife lacks economic resources to continue to visit him in Romania. 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). Accordingly, the applicant has not established that denial of the present waiver application would prevent him and his wife from continuing to attempt to conceive a child while he resides outside the United States.

The AAO acknowledges that the applicant's wife continues to require care for recurring fibroids, and that she may require additional surgery. However, as her medical insurance is based on her present employment, the record supports that she will continue to receive needed care should she remain in the United States.

Counsel asserts that the applicant's wife is enduring economic hardship due to the applicant's absence. However, the applicant has not submitted any documentation of his wife's income or expenses, other than evidence of telephone charges. The applicant's wife noted that they sold their home and she resides with her brother, thus the record does not support that she presently has expenses related to housing. Counsel asserted that the applicant's wife must pay rent to her brother, yet the applicant's wife did not make this claim. Counsel contends that the applicant's wife must make a car payment, yet the only document in the record pertaining to a car consists of a title to a 1994 vehicle in the applicant's name that was purchased in 2003. The applicant has not provided any documentation to show that he or his wife presently owe a debt due to the purchase of a car. As noted above, counsel's unsupported assertions do not constitute evidence.

Counsel contends that the applicant's wife's economic support of her parents is necessary to prevent her parents from becoming charges of the state. However, the applicant's mother merely attested that the applicant's wife purchases household items for them such as detergent and fruit. The applicant has not shown that his wife incurs significant expenses due to assisting her parents. It is noted that the physician for the applicant's wife's parents indicated that they have multiple children who assist them. Thus, the applicant has not shown that his wife is her parents' sole source of economic assistance when needed. Counsel made assertions regarding the economic resources of the applicant's mother- and father-in-law, yet the applicant has not submitted any documentation of their savings or income. Again, counsel's assertions will not satisfy the applicant's burden of proof. Accordingly, the applicant has not shown that his wife is facing significant economic hardship due to her parents.

The applicant's mother- and father-in-law each note that they have experienced health problems, including a heart attack, high blood pressure, and knee replacements. However, the applicant has not submitted any medical documentation for his mother- and father-in-law to support that they have health problems that require his wife's assistance.

The applicant's wife asserts that she is unable to continue her education without the applicant's economic assistance. However, it is noted that the applicant's wife completed a bachelor's degree in chemistry and vocational training prior to marrying the applicant. The applicant has not stated how his wife was able to fund and complete a bachelor's degree without his assistance, and he has not shown that she now must rely on him to continue her academic efforts.

The applicant's wife expressed fear regarding prior incidents at her residence, including a youth shooting her front door with a paintball gun and an attempted burglary. However, as the applicant's wife now resides with her brother and his family, the record does not show that she remains alone in

the residence where she encountered the prior incidents. It is further noted that the police reports on the past incidents do not show that the applicant's wife is in present danger or targeted for harm.

The record supports that the applicant's wife is experiencing significant emotional hardship due to separation from the applicant. She has sought treatment for depression and anxiety, for which she has received medication and counseling. The AAO acknowledges that the applicant's wife's emotional hardship is compounded due to her health challenges and desire to have the applicant in the United States so that they may attempt to conceive a child here. The AAO has carefully reviewed the statements from the applicant's coworkers and relatives to assess the level of psychological difficulty she is experiencing. However, the applicant has not sufficiently distinguished his wife's emotional hardship from that which is commonly experienced when spouses reside apart due to inadmissibility.

Federal court and administrative decisions have 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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. *Hassan v. INS*, *supra*, held further 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.

All elements of hardship to the applicant's wife, should she remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will suffer extreme hardship if he is prohibited from returning to the United States for the duration of his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant has shown that his wife will endure extreme hardship should she relocate to Romania. The applicant's wife previously had surgery to remove uterine fibroids. As noted above, she has received medical care in the United States, and her present health insurance is based on her employment. Should she resign her employment and relocate abroad, she would likely lose her health coverage and income, as well as regular access to the doctors who provide her care. The applicant has shown that his wife would likely face a reduced quality of medical care in Romania. The applicant's wife faces a return of uterine fibroids, and should she require surgery in Romania without medical insurance, she would likely experience significant economic, physical, and emotional hardship. The applicant's wife's medical needs due to her history of uterine fibroids constitute unusual circumstances not ordinarily faced when an individual relocates abroad due to the inadmissibility of a spouse. Based on the foregoing, the applicant has shown that his wife would face extreme hardship should she relocate to Romania.

An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, or should the qualifying relative choose to remain in the

United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. *See Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). As the applicant has not shown that his wife would face extreme hardship should she remain in the United States until he is permitted to return, he has not shown that denial of the present waiver application “would result in extreme hardship” to his wife, as required by section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.