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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 11 2013 Office: VIENNA, AUSTRIA FILE:

IN RE:

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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Vienna, Austria, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of Macedonia, 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 in the United States for more than one year and seeking admission within 10 years of his last departure. The applicant is a spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. He seeks a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse.

The director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Field Office Director's Decision,* dated April 2, 2012.

On appeal, counsel asserts that the director erred in concluding that the applicant's spouse would not suffer extreme hardship if the applicant's waiver application is denied. *See Form I-290B, Notice of Appeal or Motion*, dated April 24, 2012.

The evidence of record includes, but is not limited to: counsel's briefs, a statement from the applicant's spouse, letters from their friends, financial evidence, medical documents for the applicant's spouse, relationship documents, and family photographs.

Section 212(a)(9) states 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.
> >
> > (ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay

> authorized by the Attorney General or is present in the United States without being admitted or paroled.

The record reflects that the applicant entered the United States without inspection on October 10, 2003. On October 21, 2004, he filed for asylum, which was denied by an immigration judge on March 7, 2008. The applicant departed the United States on June 21, 2009. The applicant was unlawfully present from October 10, 2003 until he filed for asylum approximately one year later; and from March 7, 2008 until he departed on June 21, 2009. As the applicant accrued unlawful presence of more than one year and is seeking admission within 10 years of his 2009 departure, he is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act.[1]

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

The record contains references to hardship the applicant's stepson would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as factors 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 hardships to the applicant's stepson will not be separately considered, except as they may affect the applicant's spouse.

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of

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[1] The AAO notes that the applicant also is inadmissible pursuant to section 212(a)(9)(A) of the Act, for being ordered removed in 2008 and seeking admission within 10 years of his removal. He is required to file a Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212).

factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 631-32 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear, "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but *see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting

evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The AAO now turns to the question of whether the applicant in the present case has established that his qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel states that the applicant's departure has affected his spouse emotionally, physically, and financially. Moreover, according to counsel, the applicant's spouse cannot relocate to Macedonia because in the United States she has strong family ties, stable employment, and a 17-year-old son who is in school. Counsel also states that country conditions and cultural differences also play an "important role in [the applicant's spouse's] decision to remain in the United States."

The applicant's spouse states that she became depressed after the applicant's departure. She moved in with her daughter-in-law because her son was assigned to work at a location at the Canadian border and because she felt depressed. The applicant's spouse has visited the applicant three times since his departure. She wants to visit him more often but cannot because of her expenses. She states that she "can barely make ends meet." Evidence in the record indicates that the applicant's spouse's earnings were $9,652 in 2011. She also is concerned that the applicant's stress might cause him a heart attack, given his family's medical history.

The record contains a letter from Dr. , dated June 13, 2012, indicating that during a routine exam, the applicant's spouse presented symptoms of anxiety/depressive disorder, and hypertension. Dr. states that the applicant's spouse reported that she has difficulty controlling her hypertension since she became separated from the applicant. Dr. "strongly" recommends that the applicant be reunited with his spouse to help her psychologically and help control her hypertension and weight.

Letters from their friends attest to the loving and supportive relationship between the applicant and his spouse. They also refer to the applicant's good character and support his return to the United States.

The AAO concludes that the applicant has failed to demonstrate extreme hardship to his spouse resulting from their separation. The AAO acknowledges that the applicant and his spouse have a loving relationship, and nothing in this decision should be interpreted as suggesting otherwise. Regarding the applicant's spouse's symptoms of anxiety and depression, the medical evidence shows that her symptoms first occurred on April 2, 2012, nearly three years after the applicant's departure. The record does not indicate whether the applicant's spouse experienced anxiety and depression before April 2, 2012, and if so, whether she then sought treatment. Moreover, Dr. does not indicate whether the applicant's spouse's conditions impact her ability to perform common tasks. The record also indicates that the applicant's spouse has elevated blood pressure, though it does not provide details concerning the onset of her hypertensive condition. Furthermore, the record is silent about the applicant's spouse's adherence to the treatment plan Dr.

recommended in April 2012. The record fails to demonstrate that her medical conditions are directly caused by or are worsened by the applicant's absence. Moreover, it does not appear that the applicant's spouse's access to medications or healthcare services depend on the applicant's contribution or presence. The record also lacks evidence to corroborate the applicant's spouse's concerns about the applicant's health.

With respect to financial hardship, the applicant submits no financial evidence demonstrating that he contributed to their household income while he was in the United States. Moreover, it is unclear whether the applicant earns an income in Macedonia and whether he depends on his spouse financially. The record also lacks evidence showing their household expenses, such as rent or mortgage obligations, utility expenses, and any other debts. The record indicates that the applicant's spouse moved in with her daughter-in-law; however, the record contains no evidence concerning how she manages her expenses. Though the assertions of the applicant's spouse are relevant evidence and have been considered, absent supporting documentation, these assertions are insufficient proof of hardship. *See Matter of Kwan,* 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See 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)). Without accurate financial evidence regarding household income and expenses, the AAO cannot determine whether the applicant's spouse is experiencing financial hardship. The AAO concludes that the evidence submitted, considered in the aggregate, is insufficient to demonstrate that the applicant's absence has caused his spouse extreme hardship.

The AAO finds that the applicant also has failed to demonstrate that his spouse would experience extreme hardship if she joins him in Macedonia. The AAO notes that the applicant's spouse has visited the applicant in Macedonia three times since his departure, and she identified no hardship that she experienced while there. Although counsel states that country conditions and cultural differences played "an important role" in the applicant's spouse's decision to remain in the United States, the applicant fails to explain how these conditions and differences would cause hardship to his spouse. Counsel, without supporting documents, also refers to hardships the applicant's stepson would experience should he separate from the applicant's spouse; however, counsel provides no details about his hardship and how it would affect his mother, the only qualifying relative in the instant case. Without documentary evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *See 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).

With respect to the applicant's spouse's family and community ties in the United States, the AAO notes that in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. The AAO concludes that the evidence submitted,

considered in the aggregate, is insufficient to demonstrate that the applicant's spouse would experience extreme hardship, should she relocate.

In this case, the record does not contain sufficient evidence to show that the 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. Accordingly, the applicant has not established eligibility for a waiver of inadmissibility 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. *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.