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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JAN 0 2 2013 Office: VIENNA, AUSTRIA FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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:

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 with the field office or service center that originally decided your case by filing a 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 that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Shumway

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Vienna, Austria, and 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 (Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), as an alien seeking admission within 10 years of departure or removal after having been unlawfully present in the United States for one year or more. The applicant is the spouse of a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(9)(B(v), in conjunction with an immigrant visa application, in order to obtain admission to the United States as a lawful permanent resident.

The director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to the qualifying relative, as required for a waiver under section 212(a)(9)(B)(v) of the Act, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated June 10, 2010.

On appeal, counsel contends that the director erred in finding that the applicant had not demonstrated extreme hardship to his qualifying relative. *See Counsel's Brief*, dated August 2, 1010.

The record of evidence includes, but is not limited to, counsel's briefs; three statements from the applicant's U.S. citizen wife; medical records of the applicant's wife; statements from the applicant's friends; the applicant's immigration court records; background materials on country conditions in Romania; and the applicant's criminal records. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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

> (B) ALIENS UNLAWFULLY PRESENT.-
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> (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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> (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States (whether or not pursuant to section 244(e) prior to the commencement of proceedings under section 235(b)(1) or section 240), and again seeks admission within 3 years of the date of such alien's departure or removal, or
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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.
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> (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.
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> ...
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> (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.

The record indicates that the applicant was last admitted to the United States on or about August 30, 2000 as B-2 nonimmigrant visitor for an authorized period not to exceed November 29, 2000. *See Form I-94, Departure Record.* He was granted an extension to remain in the United States until May 30, 2001. A subsequent request for extension of his authorized period of stay was denied. The applicant remained in the United States beyond May 30, 2001 without permission. The record discloses that, on June 17, 2001, the applicant was arrested and charged with fleeing a police officer in the third degree in violation of section 257.602a(3)(a) of the Michigan Compiled Laws Annotated (M.C.L.A.) and with unlawful use of a license plate/registration/title in violation of section 257.256 of the M.C.L.A. On August 20, 2001, the applicant was convicted of fleeing a police officer in the fourth degree in violation of section 257.602a(2), a felony, and was sentenced to one year probation.

A Notice to Appear, placing the applicant into removal proceedings, was filed with the Immigration Court on May 23, 2005. On December 16, 2005, the Immigration Judge granted the applicant voluntary departure. The record shows that the applicant complied with the voluntary departure order and departed the United States on or about April 10, 2006. *See* Romanian Travel Document (with Romanian Entry Stamp) and airline ticket.

As the applicant has not disputed inadmissibility under section 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II), as an alien seeking admission within 10 years of departure or removal after having been unlawfully present in the United States for one year or more, from May 30, 2001 to April 10, 2006, and the record does not show that finding of inadmissibility to be in error, the AAO will not disturb the determination. The applicant seeks a waiver of his inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act. The record establishes that the applicant's spouse is a U.S. citizen and a qualifying family member for purposes of his section 212(a)(9)(B)(v) waiver application.

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).

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 of Immigration

Appeals (Board) provided a list of 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, 632-33 (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 that "[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.*, *Matter of 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

Counsel contends that the applicant's wife would suffer extreme hardship as a result of separation from her husband. The record indicates that she met and entered into a relationship with the applicant prior to the latter's voluntary departure from the United States in 2006. However, after the applicant's wife obtained a divorce from her former husband in 2007, the couple was married in Romania. The applicant's wife returned to the United Sates, where she gave birth to the couple's daughter on October 7, 2008. The applicant's wife and daughter returned to Romania to join the applicant in February 2009, and have since resided there. The applicant's wife contends that without her husband's support and financial assistance, she would be unable to support herself and her daughter, should the two of them return to the United States. She states that when she returned to the United States to give birth to the couple's daughter in 2008, she was forced go on public assistance from the government while she was pregnant. The applicant's wife indicates that she is a college graduate and a capable worker, having worked in the past as an executive secretary at an investment firm and a bookkeeper. However, she asserts that she essentially stopped working in the 1980s to start and raise a family with her former husband. Although she continued to be self-employed, she asserts that it is now difficult for her to be competitive in the job market in the United States and that she would be better off with the applicant's financial assistance.

The AAO recognizes that it would be easier for the applicant's wife if her husband were in the United States to help her financially. However, we note that the record does not contain any evidence to enable the AAO to assess the applicant's wife's financial situation, such as income and tax records, bank statements, or social security earnings statements. Although the applicant's wife asserts that she was forced to go on public assistance at one time, she has not produced any records to corroborate this claim. 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)). Moreover, we note that the period she alleges that she went on public assistance was for when she was temporarily in the United States to give birth to her daughter and maintained only a minimum wage job as a result. We also note that the applicant's wife has asserted that she has close ties to her four adult children from her prior marriage, her parents, two brothers, and her friends in the United States. Although she states that they may not be able to help her in the future or indefinitely, she has also indicated that her brother and a friend have helped her in the past financially. We also note the applicant's wife has not asserted that her relatives or friends are unable or unwilling to assist her in resettling in the United States. We understand that separation necessarily will result in some financial detriment to the qualifying relative. However, in this case, the applicant has not satisfied his burden in demonstrating the financial hardship to his wife upon separation.

The applicant's wife also asserts that being separated from the applicant was emotionally difficult and stressful after she gave birth to the couple's daughter in September 2007. The AAO recognizes that separation was distressful to the applicant's wife, as evidenced by the fact that she returned to Romania in February 2009 to join the applicant following her daughter's birth. However, an assertion of emotional distress alone is insufficient to meet the applicant's burden to show that the hardships faced by his spouse rise to the level of extreme hardship. We note again the applicant's spouse's reference to her close family ties in the United States, a possible source of emotional support for her in the absence of her husband. Although the aggregation of other hardship factors, such as financial hardship, together with emotional hardship, may be sufficient to demonstrate

extreme hardship, the applicant has not proffered corroborative evidence demonstrating the various hardship factors.

Having considered the evidence of record, the AAO finds that it does not demonstrate that the applicant's citizen spouse would experience extreme hardship as a result of separation from the applicant. While we acknowledge that the applicant's wife may suffer some emotional, physical, and financial distress as a result of the ongoing separation from her husband, the record does not show that the hardship to the applicant's wife constitutes "significant hardship over and above the normal disruption of social and community ties" normally associated with deportation or refusal of admission. *Matter of O-J-O-*, 21 I&N Dec. at 385.

Counsel also contends that the evidence establishes that the applicant's U.S. citizen wife would suffer ongoing extreme hardship as a result of relocation to Romania. The record indicates that the applicant's wife is now fifty years old and was born and resided most of her adult life in the United States. Counsel and the applicant's wife contend that relocation has caused the latter to essentially abandon her family in the United States, including her elderly parents and her four children, one of whom was still a minor when the applicant's wife moved to Romania. She also indicates that she has two brothers and their respective families in the United States. The applicant's wife states that she has been forced to have limited contact with her children and grandchildren. The applicant's wife also asserts that her elderly parents have both undergone heart surgeries and that her father nearly died on more than one occasion as a result of blood pressure problems, bleeding in his head, and heart problems. She states that she does not have medical power of attorney for her parents, but not being in the United States for them has caused all of them emotional strain.

While the AAO acknowledges that the applicant's wife's relocation may have caused her emotional distress by virtue of the disruption to her relationships and ties in the United States, we observe that the applicant has produced virtually no corroboration of those ties. On appeal, the applicant's wife indicates she cannot obtain the voluminous medical records for her parents or produce hard copies of telephone conversations and emails to her close family in the United States. We agree with the applicant's wife that the numerous medical records described would be unnecessary and very likely, unhelpful, without an explanatory letter, at a minimum, from her parents' treating physicians. We note, however, that more relevant, and possibly more accessible, evidence to demonstrate her ties to the United States is equally lacking. For instance, we note that the record contains no birth certificates for the applicant's wife's four children to demonstrate those relationships, although we give weight to the applicant's wife's divorce judgment, which references two of her children. Likewise, there are no statements or letters from any of her children or her parents in the United States to show that the applicant's wife actually has an ongoing relationship with any of them. Similarly, there is no evidence that the applicant's wife provides any kind of emotional, financial or other support to her family in the United States, or vice versa. We observe that the applicant's wife's 2007 divorce judgment indicates that physical custody of her two minor children at the time was awarded to her ex-husband and that the applicant's wife was not required to provide any further child support.

Counsel also contends that the applicant's wife suffers financial hardship as a result of her relocation. The applicant's wife contends that she is unable to find employment due to language barriers and that the family relies primarily on the applicant's income. She maintains on appeal, in her July 21, 2010 letter, that the applicant makes an average of approximately 2,500 Romanian Lei

per month and that the family's fixed expenses are about the same. We note, however, that the record contains no evidence to corroborate the applicant's wife's assertions. There are no statements from the applicant, no income or tax records for the applicant or his spouse in Romania, no copies of bills, bank statements, and expenses, or any other comparable records that would enable the AAO to better assess the applicant's and his wife's financial situation in Romania. As previously noted, without supporting documentary evidence, the applicant cannot satisfy his burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The applicant's wife also contends that the terrible conditions of her home and neighborhood, including the prevalence of crime and corruption of the police force, cause her hardship. However, here, too, we note the lack of corroboration of the conditions she asserts. Although the applicant's friends have provided letters, attesting generally to the poor conditions of the applicant's residence and neighborhood, we note they do not provide any corroboration of the applicant's wife's accounts of being the victims of crimes in Romania and of police corruption she and the applicant faced following the incidents. We also observe again the lack of more directly relevant evidence, including a statement from the applicant, the financial records previously referenced or even photographs of the applicant's home and neighborhood.

The applicant's wife also contends that that healthcare system and facilities in Romania are extremely poor and are not to the standard found in the United States. She explains that she is a cancer survivor, having gone through surgery and treatment in the United States in approximately 2000. She asserts that due to her radiation treatment, she is at high risk for other types of cancer. However, the applicant's wife contends that there are no specialists in the area in Romania in which she resides and that she would have to travel seven hours to Bucharest for treatment if she had a relapse. On appeal, she explains that she does get regular blood tests locally to ensure the cancer has not come back, but she has to provide her own clean needles. She also relays her personal experience in Romania's healthcare system and hospitals when she broke her leg while visiting in 2008. The applicant's wife states that the hospital's emergency room floor was covered in blood and dirt and that she was forced to wait several hours to receive medical care. She asserts that because of her experience and stories of friends who suffered serious injury and even death because of the poor quality of medical care, she decided to give birth to her daughter in the United States. The applicant has submitted an article of anonymous doctor from Romania, as well as a New York Times article describing the corrupt medical care system that relies heavily and historically on bribing doctors in advance of treatment. Also submitted is a U.S. Department of State (DOS) report corroborating the applicant's wife's assertion that medical care in Romania generally does not meet western standards, particularly outside major cities. *See* Bureau of Consular Affairs, U.S. Dep't of State, *Country Specific Information: Romania* (Mar. 2, 2009).

The AAO acknowledges that Romania's healthcare system, like many others in the world, may not meet U.S. standards. However, the record does not indicate that the applicant, his wife or their daughter currently suffer from any health concerns that may otherwise increase the significance of Romania's healthcare system in a determination of extreme hardship. Although the applicant's wife suffered from cancer in the past, it appears that she has been cancer free for over a decade. Moreover, she appears to have access to the follow up care and medication she requires, albeit not to the same standard she had in the United States. However, most importantly, as with the other aspects of this case, the record, once again, is lacking in evidence to corroborate the assertions of the applicant's wife, such as a statement from the applicant himself or other evidence reflecting the

applicant's wife's past experiences with the Romanian healthcare system. The applicant's wife, on appeal, contends that such records and statements documenting the poor quality of the healthcare system are not possible to obtain. She states that the private doctor who treated her was paid in cash to treat her broken leg, and therefore, has no record of the treatment and will not make a statement. While we understand that the private doctor may be unwilling to make a statement about Romania's poor and corrupt healthcare system, the applicant's wife was also treated at a clinic and a hospital prior to seeing the doctor. We note that medical records showing that the applicant's wife had suffered from a broken leg in Romania would give more weight to her personal accounts. However, it is unclear whether she has even sought to obtain such records. Without corroborating evidence, the applicant cannot meet his burden to establish the hardships the applicant's wife asserts she has faced since relocating.

The AAO notes that the such corroborating evidence is all the more relevant and important given the applicant's wife's decision to relocate with her daughter to Romania and remain there, despite her contentions that the emotional, physical, medical and financial hardships she has faced since relocation rise to the level of extreme hardship. Furthermore, as we have found that the applicant had not demonstrated that his wife would face extreme hardship in the United States upon separation, his wife's decision to remain in Romania appears to undermine her claim that she suffers extreme hardship there.

In this case, as the record does not establish that the hardships faced by the applicant's U.S. citizen wife upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship, the AAO finds that the applicant has failed to establish extreme hardship to his qualifying relative as required under section 212(a)(9)(B)(v) of the Act. He, therefore, remains inadmissible to the United States under section 212(a)(9(B)(i)(II) of the Act. Since the applicant failed to establish statutory eligibility for the waiver, the AAO finds that no purpose would be served in considering whether the applicant merits the waiver in the exercise of discretion.

In proceedings for application for 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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.