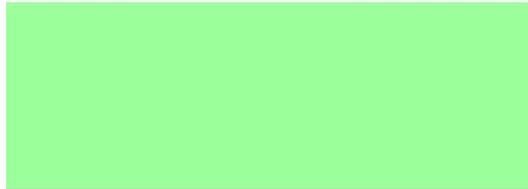
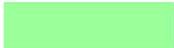


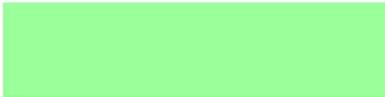


U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: MAR 04 2014 Office: ATHENS, GREECE FILE: 

IN RE: Applicant: 

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Athens, Greece, and was appealed to the Administrative Appeals Office (AAO), which dismissed the appeal. The matter is now before the AAO on motion. The motion will be granted, and the prior AAO decision to dismiss the appeal is affirmed.

The record reflects that the applicant, a native and citizen of the Czech Republic, 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 one year or more. The applicant 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), to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, March 22, 2013.

The AAO, reviewing the applicant's Form I-601 on appeal, concurred with the Field Office Director that extreme hardship to a qualifying relative had not been established and dismissed the appeal. *Decision of the AAO*, dated October 23, 2013.

On motion,<sup>1</sup> counsel contends that the AAO erred in finding that the applicant's spouse would not suffer extreme hardship if the waiver application is not approved, citing two precedent decisions. Counsel also submits a joint affidavit of the applicant's parents, who live in the Czech Republic. According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. According to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). As the applicant has submitted new documentary evidence to support her claim and has stated reasons for reconsideration supported by precedent decisions, the motion to reopen and reconsider will be granted.

The record contains, but is not limited to, the following documentation: briefs in support of Forms I-290B; affidavits of the applicant, her spouse, and her parents; a medical report for the applicant and her spouse; photographs; and country-conditions information about Lebanon. The entire record was reviewed and considered in rendering a decision on the appeal.

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<sup>1</sup> On page 1 of the Form I-290B, Notice of Appeal or Motion (Form I-290B), filed after the AAO appeal dismissal, the applicant checked the box indicating, "I am filing an appeal. My brief and/or additional evidence is attached." As explained on the cover sheet for the AAO appeal decision, an applicant who believes the AAO incorrectly applied the law or who wishes to submit additional information may file a motion to reconsider or a motion to reopen. 8 C.F.R. § 103.5(a)(1)(ii) There is nothing in the regulations allowing for an administrative appeal of an AAO decision. However, as the applicant has claimed that the decision was based on an incorrect application of law, citing precedent decisions, and has submitted additional evidence, the AAO will accept the filing of the Form I-290B as a motion.

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

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.

....

The applicant entered the United States in March 2001 as a non-immigrant and did not depart the United States upon expiration of the period of her authorized stay. The applicant married a U.S. citizen on January 6, 2005, and the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on July 25, 2005. Thus, the applicant accrued unlawful presence from 2001 until July 25, 2005, a period of more than one year. The applicant initially was granted conditional lawful permanent resident status in July 2005, but this status was terminated on December 4, 2007, after she divorced her ex-husband. The applicant subsequently married her current spouse on March 25, 2008, and filed a second Form I-485 on May 5, 2008. After the applicant's conditional lawful permanent resident status was terminated, the applicant was placed into removal proceedings. The immigration judge granted the applicant's request for voluntary departure, and the applicant departed the United States on May 4, 2010. The applicant does not contest her inadmissibility.

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 can be considered only insofar as it results in hardship to a qualifying relative. Although the applicant submits evidence of hardship to her U.S. citizen children, the applicant's U.S. citizen spouse is the

only qualifying relative in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, though children are not qualifying relatives under this statute, U.S. Citizenship and Immigration Services (USCIS) does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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-Morales*, 21 I&N Dec. 296, 301 (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 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 (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.

As the AAO stated in its decision dismissing the applicant's appeal, although the applicant and her family currently reside in [REDACTED] Lebanon, the applicant needs to establish hardship to her qualifying relative, her spouse, in the Czech Republic and the United States. Instead, the applicant had submitted evidence of hardship to her spouse in Lebanon, her spouse's home country and where his family lives. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. In order to find hardship to a qualifying relative based upon relocation, the applicant must show hardship to her spouse in the Czech Republic rather than Lebanon.

On motion, counsel asserts that the applicant and her family would have difficulty relocating to the Czech Republic, as the family would have to reside with the applicant's parents for economic reasons, and the applicant's parents' house is very small and located in the countryside, where there are no job opportunities. In their affidavit the applicant's parents state that they live in a small, two-bedroom house that they share with their son in a town 100 miles outside of Prague; no trains connect their town and Prague; their family monthly income of \$1,500 is insufficient to support themselves; and the applicant and her spouse would have difficulty finding work both in their town and in Prague. While the statements of the applicant's parents are relevant and have been considered, the applicant provides no objective corroborating evidence about the lack of employment opportunities available to the applicant and her spouse or other means to support themselves in the Czech Republic.

Counsel also contends that the applicant's children do not speak Czech; thus relocation to the Czech Republic would cause them hardship. In support of this contention, counsel cites *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996). However, in *Matter of Pilch*, the BIA was unpersuaded that the children would suffer extreme hardship if they were to relocate, noting that they had been exposed to the language and had a familial support system in Poland. The eldest child in that case was 6 years old, the same age as the applicant's eldest child. The record indicates that the applicant's children were born in 2008 and 2010 and have not lived in the United States since 2010. Nothing in the record addresses whether the applicant has exposed their children to the Czech language. Moreover, as noted above, under section 212(a)(9)(B)(v) of the Act, children are not deemed to be qualifying

relatives, and a child's hardship will only be considered a factor as it affects the hardship to a qualifying relative. There is no evidence in the record that the applicant would experience extreme hardship as a result of hardship to the applicant's children if they were to relocate to the Czech Republic.

The AAO previously found no evidence in the record showing the hardships the applicant's spouse would face were he to reside in the United States while separated from the applicant. The applicant provides no new evidence concerning hardship to her spouse in the United States with her motion. The record includes financial documentation showing that before he moved to Lebanon, the applicant's spouse earned approximately \$20,000 annually. Counsel contends that it is unrealistic to expect the applicant's spouse to support a family of four based on this income level. However, the record indicates that the applicant's spouse lived in the United States from 2002 until he returned to Lebanon in 2010. The record contains no evidence of the assets and liabilities the applicant's spouse acquired during his residence in the United States. It also lacks evidence to support concluding that he could not find employment or meet his financial obligations in the applicant's absence. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503,506 (BIA 1980).

Also, as previously indicated, it is not possible to evaluate the applicant's spouse's emotional or psychological hardship if he were to return to the United States, because the March 2012 medical report by a Beirut-based neurology specialist does not address difficulties that he would experience if he were to be separated from the applicant. Finally, there is no indication in the record that the applicant's spouse has medical conditions that would cause him hardship if he were separated from the applicant. On motion, the applicant presents no new evidence to assert that her spouse would experience extreme hardship as a result of their separation if the applicant's waiver application is not approved. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation if he returns to the United States is typical to individuals separated as a result of inadmissibility of a spouse and does not rise to the level of extreme hardship based on the record.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected disruptions and difficulties arising whenever a spouse is refused admission to the United States. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship he would face rises to the level of extreme as contemplated by statute and case law.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The motion is granted, and the prior AAO decision to dismiss the appeal is affirmed.