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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]

Office: VIENNA, AUSTRIA

Date: AUG 26 2005

IN RE: [Redacted]

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:

SELF-REPRESENTED

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, 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 Bosnia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(A)(i) and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The applicant was found to be inadmissible to the United States for a period of 10 years since her last departure from the United States. The applicant is married to a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States.

The officer in charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse. The application was denied accordingly. *Decision of the Officer in Charge*, dated April 6, 2004.

On appeal, the applicant's spouse states that the denial was based on a lack of medical documentation to substantiate his medical condition and that he has attached the necessary documentation. *See Form I-290B*, dated April 27, 2004.

The record includes medical records for the applicant's spouse and a previously submitted statement from the applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States without inspection in December 2000 and departed in May 2003. The officer in charge found the applicant to be inadmissible pursuant to section 212(a)(6)(A)(i) of the Act.

Section 212(a)(6)(A)(i) of the Act provides, in pertinent part:

(B) Aliens present without admission or parole.-

(i) In general. - Any alien **present** in the United States without being admitted or paroled . . . is inadmissible.

As the applicant is not present in the United States, section 212(a)(6)(A)(i) of the Act is not applicable to the applicant and she is not inadmissible under this section of the Act.

However, the applicant accrued unlawful presence from December 2000 until May 2003. The applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B)(i)(II) 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.

The relevant waiver provision is located in section 212(a)(9)(B)(v) of the Act.

Section 212(a)(9)(B)(v) of the Act provides:

(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 AAO notes that the officer in charge improperly cited section 212(i) of the Act, 8 U.S.C. § 1182(i) as the relevant waiver provision for unlawful presence. However, the error is harmless as the same criteria for qualification for the waiver applies in both sections 212(i) and 212(a)(9)(B)(v) of the Act, namely extreme hardship to a qualifying relative.

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 are applicable to section 212(a)(9)(B)(v) waiver proceedings and include the presence of lawful permanent resident or United States citizen family ties to 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The record does not specify the presence of lawful permanent resident or United States citizen family ties to this country for the applicant's spouse nor does it specify whether he has family ties outside the United States. The record does not include evidence of the conditions in Bosnia and the extent of the applicant's spouse's ties to Bosnia. The applicant's spouse states that he and the applicant would like to continue with real estate endeavors, the applicant helps manage his daily business routines, their only assets and home are in the United States and they do not have anything in Bosnia. See *Statement of Applicant's Spouse*, dated March 30, 2004. The applicant's spouse

states that he suffers from chronic lower back pain and the applicant takes him to the doctor's office, helps him dress and assists him with personal hygiene. *Id.* The applicant's spouse states that he will not agree to an operation to ease his chronic back pain as there is nobody to assist him through his recovery. *See id.* The applicant's spouse submits medical records, however it is unclear to what specific problems the records are referring. There is no mention of the unavailability of suitable medical care in Bosnia.

U.S. court decisions have repeatedly 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.