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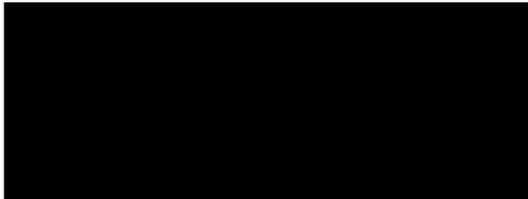
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U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

H3



FILE: [REDACTED] Office: ROME, ITALY Date: **MAY 06 2008**

IN RE: [REDACTED]

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

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Rome, Italy denied the waiver application and a subsequent appeal was rejected by the Administrative Appeals Office (AAO) as untimely filed. The AAO will reopen the matter. The appeal will be dismissed.

On October 29, 2007, the AAO rejected the applicant's appeal as untimely filed. Since the AAO's decision, documentation filed by counsel on February 4, 2008, indicates that the applicant's appeal was timely filed. The AAO is therefore reopening the matter *sua sponte*.

The applicant is a native and citizen of Bosnia who is 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 readmission within 10 years of her last departure from the United States. The applicant is the spouse of a naturalized U.S. citizen and the mother of two U.S. citizen children. She 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 with her spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated December 21, 2005.

The record reflects that, in August 1991, the applicant entered the United States without inspection. On September 4, 1992, the applicant filed a Request for Asylum in the United States (Form I-589). On January 18, 1994, the applicant's Form I-589 was denied. On October 17, 1994, the applicant married [REDACTED], a U.S. citizen. On December 6, 1994, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed on her behalf by [REDACTED]. On March 13, 1998, the Form I-130 was denied because the applicant entered the marriage solely to obtain immigration benefits.<sup>1</sup> On the same day, the applicant's Form I-485 was denied under section 212(a)(6)(C)(i) of the Act, for attempting to obtain a benefit under the Act by fraud. On June 12, 1998, the applicant divorced [REDACTED]. In August 2000, the applicant departed the United States and returned to Bosnia, where she has since resided. On September 11, 2002, the applicant married her spouse, [REDACTED]. On March 9, 2004, [REDACTED] filed a Form I-130 on behalf of the applicant, which was approved on March 9, 2004.

On April 26, 2004, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her spouse and children. On October 12, 2005, a Notice of Intent to Revoke Approval of Visa Petition was issued for the Form I-130 approved on the applicant's behalf.

On appeal, counsel contends that the district director erred by failing to properly apply case law and disregarding the particular facts of the applicant's case. Counsel contends that the applicant's family is suffering extreme hardship due to the destruction of the nuclear family. *See Counsel's Brief*, received

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<sup>1</sup> The AAO notes that, if an applicant engages in marriage fraud solely to obtain an immigration benefit, the applicant is permanently ineligible to apply for admission to the United States pursuant to section 204(c) of the Act. However, since the applicant's current Form I-130 has not been revoked under section 204(c) of the Act, the AAO will adjudicate the Form I-601.

February 23, 2006. In support of his contentions, counsel submits the referenced brief and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

Section 212(a)(9)(B) 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 district director based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's unlawful presence in the United States from April 1, 1997, the effective date of the unlawful presence provisions of the Act, until August 2000, the date on which she departed the United States. The AAO notes, however, that the Form I-485 filed by the applicant on December 6, 1994, was still pending on April 1, 1997, and was not denied until March 13, 1998. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant, therefore, accrued unlawful presence from March 13, 1998, until she departed the United States in August 2000, a period of more than two years. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking admission within ten years of her 2000 departure.

The applicant is also inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for attempting to obtain immigration benefits by fraud in 1994. While counsel contends that the applicant did not engage in marriage fraud, the denial of her initial Form I-130 clearly states that it was denied because the marriage was solely to obtain immigration benefits. Neither the applicant, nor her first husband responded to a Notice of Intent to Deny the Petition for Alien Relative, which noted specific inconsistencies uncovered during an investigation of the marriage by legacy Immigration and Naturalization officers. While the record

contains an affidavit from the applicant's former spouse that states that he did not engage in marriage fraud, this statement is insufficient to overcome the findings in the denial letter. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *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)).

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

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Hardship to the alien himself is not a permissible consideration in a Form I-601 waiver proceeding. A section 212(a)(9)(B)(v) or 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(a)(9)(B)(v) and 212(i) cases. Thus, hardship to the applicant's U.S. citizen son and daughter will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Since the applicant's spouse is a U.S. citizen and is not required to reside outside the United States as a result of the denial of the applicant's waiver request, extreme hardship must be established whether he resides in the United States or in Bosnia. 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).

The record reflects that [REDACTED] is a native of Bosnia (formerly Yugoslavia) who became a lawful permanent resident in 1988 and a naturalized U.S. citizen in 1999. The applicant and [REDACTED] were married prior to the applicant's marriage to [REDACTED] and they have a 26-year old son who is a native of Bosnia (formerly Yugoslavia) who became a lawful permanent resident in 2000 and a naturalized U.S. citizen in 2005. The applicant and [REDACTED] also have a 21-year old daughter who is a U.S. citizen by birth. The applicant is in her 40's and [REDACTED] is in his 50's.

Counsel, on appeal, contends that, because the district director cited cases that do not have facts similar to Mr. [REDACTED]'s situation as a basis for denial of the applicant's waiver, the cases fail to support the district director's decision to deny the applicant's waiver request. However, while the cases cited by the district director may not involve identical situations to that faced by [REDACTED], the district director correctly cites these precedents, because they set forth factors and findings in determining "extreme hardship." These precedents offer insight into what type or combination of hardships would constitute extreme hardship to the applicant's spouse.

On appeal, counsel asserts that the applicant is not only the spouse of a U.S. citizen, but the mother of two children who reside legally in the United States with her spouse. Counsel asserts that the district director's denial acknowledges the close relationship of the applicant with her daughter and the need for a mother on the part of her son. Counsel asserts that there are continuing and substantial financial constraints that affect the qualifying spouse in maintaining two separate households, one in the United States and one in Bosnia. Counsel asserts that these four people, whose lives have been intertwined for 25 years, are now forced to live apart.

[REDACTED], in his letter, asserts that he has two children with the applicant. He asserts that the applicant assists his daughter with her education, cultural, and with her home care and other needs. He asserts that the applicant has a close relationship with their daughter and it would be devastating to his daughter if she is unable to reunite with her mother. He asserts that their son lives with him and also needs his mother.

While the AAO notes that [REDACTED] may have to lower his standard of living, the record does not contain any documentary evidence that demonstrates that he is unable to support the family without the financial support of the applicant. The record does not support a finding of financial loss that would result in an

extreme hardship to [REDACTED] if he had to support himself without additional income from the applicant, even when combined with the emotional hardship described below.

There is no evidence that [REDACTED] or his children suffer from a physical or mental illness that would cause [REDACTED] to suffer hardship beyond that commonly faced by aliens and families upon removal. While it is unfortunate that [REDACTED] would experience distress and some level of depression as a result of his separation from the applicant and the separation of his children from their mother, the record does not demonstrate that their emotional reactions are different than those normally experienced when families are separated by removal.

Counsel contends that the instant case is similar to the case set forth in *Matter of Mansour*, 11 I&N Dec. 306 (BIA 1965), in which the Board of Immigration Appeals (BIA) found the applicant's spouse would suffer exceptional hardship. Counsel's paralleling of the applicant's case to that found in *Matter of Mansour* is unpersuasive. In *Matter of Mansour*, the applicant's spouse suffered from a pre-existing psychological condition and was unable to assimilate to life in the foreign country because she was part of a minority faith and the foreign country would likely refuse to permit the applicant's spouse to leave the country even after the two-year foreign residency requirement was fulfilled. The record in the present case does not demonstrate that the applicant's spouse would suffer hardship beyond that normally experienced by family members separated as a result of removal. In *Matter of Mansour*, the BIA stated that, "[t]emporary separation, even though abnormal, is a problem many families face in life and, in and of itself, does not represent exceptional hardship as contemplated by section 212(e)."

[REDACTED], in his letter, asserts that Bosnia is in the process of reconstruction and its medical centers, and educational and religious institutes have not yet been restored to a level that would allow him to raise his children there. He asserts that his daughter barely speaks and writes Serbian and is accustomed to her American friends and school. He asserts that both of his children would be unable to continue with higher education and it would be a loss of a great deal of time for them to be educated in a foreign language. He asserts that his children fear being ostracized in Bosnia because they were raised in the United States. He asserts that the children's access to higher education would likely be cut off because they were raised in the United States. He asserts that the family has most of their close relatives in the United States. He asserts that the economy in Bosnia is in extreme shape and the potential for employment for his children is nonexistent. He asserts that the family does not have a home in Bosnia and everything that they own is in the United States. He asserts that the family has lived in the United States for 17 years and they could not imagine living elsewhere.

Like the district director, the AAO notes that many of the hardships claimed by the applicant's spouse relate to his children. However, as previously noted, hardship to the applicant's children will not be considered in this proceeding, except as it affects the applicant's spouse. In that the record fails to establish how and to what extent the hardships experienced by the applicant's children would affect her spouse, their suffering will not be relied upon to demonstrate extreme hardship.

Having analyzed the hardships [REDACTED] claims he would suffer if he were to join the applicant in Bosnia, the AAO finds that they do not constitute extreme hardship. There is no evidence in the record that [REDACTED] his children and the applicant would be unable to obtain *any* employment in Bosnia. While the employment they may be able to obtain in Bosnia may not be comparable to the employment they would have in the United States or allow for the standard of living to which they are accustomed, economic detriment of

this sort is not unusual or extreme. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9<sup>th</sup> Cir. 1986). While the hardships that would be faced by [REDACTED] in relocating to Bosnia--his readjustment to the culture, economy, environment, separation from friends and family, and an inability to obtain the same opportunities they would receive in the United States--are unfortunate, they are the types of hardships encountered by any spouse joining a removed alien in a foreign country. Moreover, the AAO notes, as previously indicated, that the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

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 spouse would face extreme hardship if the applicant were removed from the United States. Rather, the record demonstrates that [REDACTED] would face the unfortunate, but expected disruptions and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in sections 212(a)(9)(B)(v) and 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under sections 212(a)(9)(B)(v) and 212(i) of the Act. 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. As counsel's remaining contentions go to the matter of discretion, they will not be addressed in this decision.

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, the burden of proving eligibility rests 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.