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

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] **Office: VIENNA, AUSTRIA** Date: DEC 29 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h)

ON BEHALF OF PETITIONER:

[redacted]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew
Chief, 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 Serbia and Montenegro who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of al crime involving moral turpitude. The applicant is the spouse of a U.S. Citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his wife.

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Officer-in-Charge* dated April 17, 2007.

On appeal, the applicant's wife asserts that she is suffering emotional and physical hardship due to separation from the applicant and further states that although the applicant has a criminal history, he is not dangerous and has learned from his mistakes. *See Notice of Appeal to the AAO (Form I-290B).* In support of the waiver application and appeal the applicant's wife submitted letters from her doctor, certificates from the Municipal Court of Peja, Kosovo and the Apostolic Administration of Prizren in Peja, photographs of the applicant and his wife, copies of plane tickets, a copy of a telephone bill, and a letter from the applicant's wife. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(2)(A) of the Act states in pertinent part:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
>
> > (I) a crime involving moral turpitude
> > (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) states in pertinent part:

> (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-
>
> > (1)(A) [I]t is established to the satisfaction of the Attorney General that-
> >
> > > (i) [T]he activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

> (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
>
> (iii) the alien has been rehabilitated; or
>
> (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

The applicant was convicted of assault resulting in serious bodily injury, a crime involving moral turpitude, on December 13, 2004 in Peja, Kosovo for conduct that took place in November 2002 and was sentenced to six months imprisonment. Since less than 15 years has passed since the criminal activity for which he was last convicted, the applicant is statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act. He is, however, eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(1)(B) of the Act.

Section 212(h) 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere

showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a thirty-four year-old native and citizen of Serbia and Montenegro who was found to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act for a conviction for assault resulting in serious bodily harm. He has never resided in the United States. The record further reflects that the applicant's wife, whom he married on August 15, 2005 in Peja, Kosovo, is a thirty-three year-old native of Serbia and Montenegro and citizen of the United States. The applicant currently resides in Peja, Kosovo and his wife resides in Staten Island, New York.

The applicant's wife states that she was very lonely before meeting the applicant and that without the applicant "it is becoming harder and impossible to live." *Letter from* [redacted] dated January 8, 2007. She states that after their August 2005 marriage in Kosovo they began living together and that those "were the most beautiful moments" of her life. *Letter from* [redacted]. She further states that during the past years she has traveled to Kosovo several times to be with the applicant, but that the traveling is taking a toll on her and leaving her economically and physically burdened, and the separation is causing her and the applicant emotional distress. *Letter from* [redacted] The applicant's wife further claims that the stress she is experiencing has resulted in Hypercholesterolemia, Panic Disorder, and non-healing anal fissure. In support of this assertion she submitted two letters from her doctors stating that she has been diagnosed with these condition and that she is in pain and cannot work due to the anal fissure. *See Letters from* [redacted] dated May 21, 2007 and [redacted] dated May 23, 2007.

The applicant's wife states that she is suffering from physical and psychological conditions resulting from the stress of being separated from the applicant. Significant conditions of physical or mental health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. Letters from the applicant's wife's physicians state that she has been diagnosed with Hypercholesterolemia and Panic Disorder as well as a non-healing anal fissure, which is causing her pain and preventing her from working. The evidence on the record is insufficient to establish, however, that her medical condition is serious enough to result in extreme hardship if the applicant is denied admission to the United States. The letters from her doctors state that she has been diagnosed with Hypercholesterolemia and Panic Disorder, but provide no further detail about the nature and severity of these conditions, any treatment being received, or the prognosis for recovery. Without more detailed information, the AAO is not in a position to reach conclusions concerning the severity of a medical condition or the treatment needed. A letter from [redacted] states that the applicant's wife is unable to work due to a non-healing anal fissure, but provides no further detail about the treatment being received or the prognosis for recovery. Further, although the letter indicates that the applicant's wife is unable to work due to this condition, there is no evidence on the record concerning the applicant's wife's employment or income and no explanation concerning when she is expected to be able to return to work and who is currently providing her with financial support. The AAO further notes that the applicant has never lived or worked in the United States and there is no evidence that he ever provided his wife with financial support such that denying him admission to the United States would cause her to experience any financial hardship.

The applicant's wife states that she is suffering emotional hardship due to separation from the applicant. There is no detailed information on the record, however, concerning the applicant's wife's mental health or the potential emotional or psychological effects of the separation. The evidence on the record does not establish that the emotional effects of separation from the applicant are more serious than the type of hardship a family member would normally suffer when faced with the prospect of a spouse's removal or exclusion. Although the depth of her distress over being separated from her husband is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 exists.

The applicant's wife states that she returned to the United States because it is very difficult for her to live in Kosovo, that things have changed, and she has "grown accustomed to a certain lifestyle that can not be found anywhere else but the United States." *Letter from* [redacted] She further states,

> Every time I have been in Kosovo, I have tried very hard to get used to life there; however, I can not. Furthermore, my mother, siblings, other relatives and friends that are very dear to be (sic), live here in the United States.

No documentation concerning conditions in Serbia and Montenegro or the applicant's wife's ties to the United States was submitted to support the assertions made by the applicant's wife. 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)).

Based on the record, any hardship the applicant's wife would experience if the applicant is denied admission to the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *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).

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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(h) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.