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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

H2

[redacted]

FILE: [redacted] Office: VIENNA, AUSTRIA Date: MAR 10 2010

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Kosovo. He was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of a Crime Involving Moral Turpitude (CIMT). The applicant is the husband of a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h) in order to reside in the United States.

The Officer in Charge (OIC) concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 17, 2007.

On appeal, counsel for the applicant asserts that the Officer in Charge misapplied precedent, incorrectly weighed the evidence in the record, and that the applicant's spouse would experience extreme hardship if his waiver application is denied.

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) of the Act provides, in pertinent part, that:

> (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . . .
>
> > (1) (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 record indicates that the applicant was convicted of Forgery/Counterfeiting of Official Documents, art. 203, paras. 3 and 1, of the Kosovo legal code (PLK) in 2001. Forgery of Public Documents is a CIMT. *Matter of M*, 9 I. & N. Dec. 132 (BIA 1960). As such, the applicant has been convicted of a CIMT. The applicant does not contest this finding, but asserts that the conviction qualifies for the petty offense exception at section 212(a)(2)(A)(ii)(II) of the Act, which states that, if the maximum penalty for a single CIMT conviction does not exceed one year of incarceration and the applicant was not sentenced to more than six months imprisonment, a single conviction does not

render an applicant inadmissible to the United States. The record, however, contains documentation that establishes that the maximum penalty for the applicant's conviction is up to five years incarceration. Therefore, the applicant's conviction is not amenable to the petty offense exception in section 212(a)(2)(A)(ii)(II) of the Act.

A waiver of inadmissibility under section 212(h) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse, parent or child of the applicant. Hardship to the applicant is not directly relevant to the determination of extreme hardship under the statute and is considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's U.S. citizen spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

> 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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record includes, but is not limited to, briefs from counsel; statements from the applicant's spouse; statements from friends, family and associates of the applicant and her spouse attesting to the moral character of the applicant, the genuineness of their marriage, and the hardships the applicant's spouse would face if she returned to Kosovo; a handwritten medical statement concerning the applicant's spouse from [redacted]; a psychological assessment of the applicant's spouse by psychiatrist [redacted] a letter from [redacted] who is caring for the applicant's spouse's father following a recent traffic accident; school certificates for the applicant's spouse; photographs of the applicant and his spouse; a copy of the section on Serbia from Country Reports on Human Rights Practices – 2006, issued by the U.S. Department of State; an

article on the economy in Kosovo from the *Financial Times*, dated August 13, 2007; and translated court records pertaining to the applicant's conviction. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Counsel for the applicant asserts that the Officer in Charge misapplied relevant precedent and addresses factual distinctions between the cases cited by the Office in Charge and the applicant's case. The AAO finds, however, that the cases cited by the Officer in Charge were not relied upon for their factual relevance or holdings, but for the guidance they provide in defining extreme hardship, the standard that governs this proceeding. The Officer in Charge's reliance on the cited case law was, therefore, reasonable and appropriate.

Counsel asserts that the applicant's spouse cannot return to Kosovo because of her background and prior refugee status, and that the applicant's exclusion constitutes an extreme hardship on her due to her fragile mental condition. To establish the applicant's spouse's mental condition, the record contains a psychological assessment prepared by [redacted] recounts the symptoms that the applicant's spouse relayed to him and finds them compatible with the symptoms of depression and anxiety, but particularly for post-traumatic stress disorder. He notes that due to the severity of the applicant's spouse's suffering and dysfunction that she warrants official mental health diagnoses and concludes that not allowing the applicant to enter the United States would pose a serious hardship to her physical and mental health.

Although the input of any mental health professional is respected and valuable, the AAO finds the submitted assessment of the applicant's spouse to have little evidentiary weight in this proceeding. It notes that the majority of [redacted] evaluation recounts the applicant's spouse's history in Kosovo and that his brief discussion of her symptoms and his analysis of those symptoms lacks detail. The AAO further observes that [redacted] assessment is based solely on two hour-long interviews with the applicant's spouse and that he does not indicate that he reviewed any other documentation in connection with his analysis or conducted any corroborating tests to reach his conclusions. [redacted] also fails to recommend further treatment for the applicant's spouse or to indicate that such treatment is necessary despite having found that the severity of her symptoms warranted diagnoses under the Diagnostic and Statistical Manual for Mental Disorders. The AAO further observes that despite having made this observation, [redacted] did not provide any diagnoses with regard to the applicant's spouse's mental health. Neither did he indicate the impact of the applicant's exclusion on his spouse beyond stating that it would result in "serious hardship to her physical and mental health." Accordingly, the AAO finds the psychological evaluation of the applicant's spouse to lack the insight and elaboration required of a psychological evaluation and, therefore, to be of limited value to a determination of extreme hardship.

The record also contains evidence relating to the applicant's spouse's physical health that includes medical test results, and a medical referral and prescriptions, as well as a handwritten statement from [redacted]. The submitted evidence is not, however, sufficient to establish the exact nature of the applicant's spouse's medical problems or how they affect her ability to function. While the AAO notes the submitted evidence of the medical referral, test results and prescriptions, it does not find them to identify the particular medical condition from which the applicant's spouse suffers. The letter written by [redacted] states that the applicant's spouse is undergoing a workup for probable kidney stones but the record contains no additional evidence as

to the outcome of this workup. In the absence of a documented medical condition and its impact on the applicant's spouse, the AAO is unable to determine that she suffers from any physical condition that would result in extreme hardship for her if the applicant's waiver application were to be denied.

The applicant's spouse has submitted a January 22, 2010 letter from [redacted], a medical resident at St. Barnabas Hospital, who states that the applicant's spouse's father was admitted to the hospital in critical condition on January 20, 2010 and remains in guarded condition. [redacted] indicates that the applicant's spouse should be excused from other obligations as she needs to stay close to her father. [redacted] letter is accompanied by a statement from the applicant's spouse who reports that her father was struck by a truck while walking with his grandson and that he will not be able to work. She asserts that her mother has taken off six months from her job to care for her father and that she must work and support her family. She asks that the applicant be allowed to enter the United States so that both of them can support her parents.

While the AAO notes the applicant's spouse's statement and the letter from [redacted], it does not find the record to include sufficient evidence to establish the type or extent of the care and support that the applicant's spouse's father will require following his hospitalization or that the applicant's spouse will be responsible for the financial support of her parents. Counsel indicates that the applicant's spouse's sister is employed as an accountant and the applicant's spouse reports that her older brother, his wife and son now also live with the family. There is no indication in the record that the applicant's spouse's siblings are unable or unwilling to assist in financially supporting their father. Without additional evidence, the AAO is unable to determine the financial impact of her father's accident on the applicant's spouse. Accordingly, the record does not establish that the applicant's spouse would experience extreme hardship if he is excluded and she remains in the United States.

As previously discussed, the applicant is also required to establish extreme hardship to a qualifying relative if he or she relocates with the applicant. Counsel asserts that the applicant's spouse will experience extreme hardship because she cannot relocate to Kosovo. Based on the record before it, the AAO finds that a permanent relocation to Kosovo would result in extreme hardship to the applicant's spouse. However, as the record also fails to establish that the applicant's spouse would experience extreme hardship if she resided in the United States, the applicant has failed to establish extreme hardship to a qualifying relative under section 212(h) of the Act.

The AAO acknowledges that the applicant's spouse will experience hardship as a result of his inadmissibility. However, U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). 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. In that the record does not distinguish the hardship that would be suffered by the applicant's spouse from the hardship normally experienced by others whose family members have been excluded from the United States, the applicant has failed to demonstrate extreme hardship to his spouse under section 212(h) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.