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

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[redacted]

FILE: [redacted] Office: VIENNA, AUSTRIA Date: JUL 21 2008

IN RE: [redacted]

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

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.

Robert P. Wiemann, 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 citizen of Montenegro who 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 more than one year and seeking readmission within ten years of his last departure from the United States. The applicant is married to a U.S. citizen and he seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The officer-in-charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse and the application was denied accordingly. *Decision of the Officer-in-Charge,* at 3, dated June 5, 2007.

On appeal, counsel asserts that evidence submitted included more than the normal inconveniences of removal and that the officer-in-charge should have put more weight on the evidence submitted. *Form I-290B*, dated July 2, 2007. The Form I-290B indicates that a brief and/or evidence will be sent within 30 days. However, the AAO has not received this material. The record indicates that counsel was notified by the AAO on July 8, 2008 that any additional evidence was to be submitted within five business days. As of this date, counsel has not responded. Accordingly, the record is considered complete.

The record includes, but is not limited to, two statements from applicant's spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

The record indicates that the applicant entered the United States without inspection in March 1985 and departed the United States in May 2006. The applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions went into effect, until May 2006, the date of his departure from the United States. Therefore, 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 and seeking readmission within ten years of his May 2006 departure.

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.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. 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).

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. These factors include, but are not limited to, 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she relocates to Montenegro or in the event that she remains in the United States, as she is not required to reside outside of the United States based on denial of the applicant's waiver request. The record reflects that the applicant is currently residing in Montenegro.

The first part of the analysis requires the applicant to show extreme hardship to his spouse in the event of relocation to Montenegro. The applicant's spouse states that she and her spouse have no financial support in Montenegro, they are living off their savings from prior work in the United States, she is a certified cosmetologist in the United States, she cannot find employment, she has lost higher education and job opportunities because of the language barrier and the costs involved, she and her spouse are providing for eight people (two of whom are ill and older in age), this is the first time she has left the United States and been away from her parents, three brothers, sister, four nieces and two nephews, staying in contact with her family is expensive and not being able to talk to them regularly is a psychological burden. *Applicant's Spouse's Second Statement*, at 2-3, undated. In regard to the applicant's spouse's claims of financial hardship, the record reflects that the applicant is currently employed as a professional basketball player. *Applicant's Form DS-230, Part 1*, at 1, dated October 10, 2006. The record is not clear as to his annual salary and whether it would alleviate the claimed financial hardship.

The applicant's spouse also states that it is extremely cold in Montenegro, their house is not insulated, eight of them gather around an oven to keep warm on cold nights, she has missed numerous events and gatherings in

the United States, she is an ethnic Albanian, and that on September 9, 2006 their home in Montenegro was raided by 30 special police who held members of the family at gunpoint and arrested, tortured and imprisoned the breadwinner of the house (her spouse's uncle). *Applicant's Spouse's Second Statement*, at 3-5. The applicant's spouse states that healthcare is a major concern and many Albanians receive poor treatment from the government and Montenegro's non-Albanian citizens. *Applicant's Spouse's First Statement*, at 1-2, dated November 21, 2006. The AAO notes that 18 ethnic Albanians, some of whom were U.S. citizens, were arrested by Montenegrin police officers, in the villages of Tuzi and Malesije on September 9, 2006 on charges of terrorism and that serious human rights concerns were raised by their treatment during and subsequent to this incident. However, the AAO does not find the events of September 9, in and of themselves, to demonstrate that the applicant's spouse is at risk of persecution or physical harm based on her Albanian heritage if she remains in Montenegro. The record offers no country conditions materials that support the concerns raised by the applicant's spouse or that indicate that ethnic Albanians in Montenegro generally fear mistreatment at the hands of Montenegrin authorities.

The second part of the analysis requires the applicant to prove extreme hardship in the event that his spouse remains in the United States. The record does not include evidence related to this prong of the analysis. Therefore, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse remains in the United States without the applicant.

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 who are removed.

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 he 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.