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**U.S. Citizenship  
and Immigration  
Services**

[Redacted]

H1

FILE: [Redacted] Office: VIENNA, AUSTRIA

Date: **JAN 03 2007**

IN RE: [Redacted]

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

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 Acting Officer in Charge (OIC), Vienna. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] (Mr. [REDACTED] was born in the former Yugoslavia and is a citizen of Serbia and Montenegro. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation; and pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more. Mr. [REDACTED] seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i); and section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), in order to return to the United States to join his U.S. citizen wife, [REDACTED] (Mrs. [REDACTED]

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, his U.S. citizen wife, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the OIC*, dated September 16, 2005.

On appeal, counsel for the applicant states, "It is my opinion that the extreme hardship was proved. However, I will provide additional psychological evidence of hardship." *Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B)*, dated October 12, 2005. Counsel subsequently submitted a report by a licensed psychologist based on the psychologist's interview with Mrs. [REDACTED] on December 13, 2005. *Report by Dr. [REDACTED] (Psychologist's Report)*, prepared December 14, 2005. The Psychologist's Report notes that Mrs. [REDACTED] lives with her parents and other relatives as she has been unable to afford to live independently since her husband returned to Serbia and Montenegro; that her father is 62 and has been disabled for many years and has several medical problems; that she suffers from severe endometriosis; that she will need the help of a fertility expert, and she does not think this is available in Serbia and Montenegro; and that "she is experiencing both chronic anxiety and depressive symptomatology" as a direct result of being separated from her husband. *Id.* In addition to the Psychologist's Report, the record contains a "Statement Claiming Extreme Hardship" from Mrs. [REDACTED] that explains that she and Mr. [REDACTED] have been together for almost eight years and that he is her "soul mate, [her] life" and that they have built a life together in the United States and that their separation has been a strenuous time for them. *Statement by [REDACTED]* [REDACTED] May 4, 2005. She states that she is working and also pursuing a university degree; that her husband was a truck driver before he left for Serbia and Montenegro; and that she visited him there, but can no longer afford to visit him or jeopardize her job and her education; she adds that she has been supporting her husband in Serbia and Montenegro. *Id.* There is no other evidence in the record that is relevant to a hardship determination. The record also includes a statement by the applicant that he entered the United States in 1993 with a fraudulent passport and remained in the country until June 20, 2004. *Statement by [REDACTED]* [REDACTED] January 18, 2005.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

Section 212(i) of the Act provides:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the [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 [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 . . . .

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(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 [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 [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.

Regarding the applicant's grounds of inadmissibility, the record reflects that the applicant admitted that he entered the United States in 1993 with a fraudulent passport and remained in the country until June 20, 2004. He is thus inadmissible on two grounds: for having procured entry into the United States by fraud or willful misrepresentation, and for having remained unlawfully in the country for over one year. The OIC, therefore, correctly found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act and, as he is seeking admission within 10 years of his last departure, also under section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest this finding.

A waiver of inadmissibility under both sections 212(i) and 212(a)(9)(B)(v) 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 or parent of the applicant. Hardship to the applicant or to his children is not a permissible consideration under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. Mr. [REDACTED] U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she 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 reflects that Mr. [REDACTED] was born in 1972 in former Yugoslavia, now Serbia and Montenegro. He applied for asylum in the United States in March 1993, but his case was administratively closed when he did not appear for his scheduled interview. Mrs. [REDACTED] was born in 1977 in the United States, and, according to the biographic information in the record (*Forms G-325A*, submitted with Form I-130, Petition for Alien Relative, September 27, 2002), she has lived in the United States her entire life, and she and her parents reside in New Jersey. Biographic information also indicates that the couple resided together in New Jersey after they married in 2000 until Mr. [REDACTED] left for Serbia and Montenegro in 2004 in order to apply for an immigrant visa. *Id.* He had been found ineligible to adjust status in the United States. *See I-130 supra*. Based on their statements, Mr. [REDACTED] worked in the United States as a truck driver, and Mrs. [REDACTED]

worked as a receptionist. *Forms G-325A; Form I-130; Statement by*

*supra; Psychologist's Report, supra.*

Other than the Psychologist's Report and statements by Mrs. [REDACTED] there is no evidence in the record that is relevant to a hardship determination. There is no evidence in the record regarding the financial situation or income of the couple, as the record does not contain income tax records, employer letters or pay stubs, or documents indicating that Mrs. [REDACTED] sends money to her husband overseas. The record does not contain evidence of the immigration status of family members in the United States. Absent from the record are medical and doctor's reports that would be evidence of any health problems suffered by Mrs. [REDACTED] or her father, or the need for specialized treatment. The record is also silent as to conditions in Serbia and Montenegro which would support claims that Mrs. [REDACTED] could not receive proper medical care or that it would be difficult for the couple to financially support themselves there.

Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. Counsel's statement on appeal that it is his opinion that extreme hardship had been proven is not evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Statements by Mrs. [REDACTED] in her own declaration or as reported in the Psychologist's Report, although relevant, cannot be given much weight absent supporting evidence. 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)).

The record as it exists does not support a finding that Mrs. [REDACTED] would suffer extreme hardship if Mr. [REDACTED] were not granted a waiver of inadmissibility. It is clear from the Psychologist's Report that Mrs. [REDACTED] is suffering from anxiety and depression as a result of being separated from her husband, and the AAO recognizes that the emotional and psychological hardship of separation would be extremely difficult for her if she chose to remain in the United States separated from her husband. Separation from a spouse is a significant factor to be considered for purposes of an extreme hardship determination and it is not discounted. The record does not, however, indicate that Mrs. [REDACTED] psychological state is more severe than other spouses in the same situation. In addition, there is no evidence in the record that indicates that Mrs. [REDACTED] would suffer extreme hardship if she chose to join her husband in Serbia and Montenegro, thus alleviating her current anxiety and depression and allowing the couple to move forward with plans for a family. Although the record reflects that her parents live in the United States, it also reflects that her husband's parents live in Serbia and Montenegro, indicating that she would not lack some community support if she joined him there. There is no evidence that she or her husband would not be able to find employment in Serbia and Croatia, or that medical care or educational opportunities are lacking or substandard.

If Mrs. [REDACTED] decided to join her husband to avoid the hardship of separation, there is no evidence that she or her husband would not be able to adjust to life in Serbia and Montenegro or not be able to earn a living wage. There is no indication that Mrs. [REDACTED] health or financial situation would suffer, other than unsupported statements in the record. Absent information on country conditions and the affect of such conditions on the personal economic or health situation of Mrs. [REDACTED] the AAO cannot conclude that any hardship experienced as a result of relocation to Serbia and Montenegro would be extreme. Although Mrs.

██████████ would be separated from her family members and her customary life in the United States if she relocated to Serbia and Montenegro, the record does not support a conclusion that the hardship of this separation would be beyond that which is normally experienced in most cases of removal or inadmissibility.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that Mrs. ██████████ faces extreme hardship if her husband is refused admission. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. 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. 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 individuals who are deported. *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The record indicates that Mrs. ██████████ is currently enduring hardship as a result of separation from her husband, but she has the option of avoiding the hardship of this separation by joining her husband. Although she states that she cannot leave her father because of his medical problems and that she needs medical services that are not available in Serbia and Montenegro, there is no evidence to support these assertions. Her situation, based on the record, is typical of individuals separated as a result of removal or inadmissibility.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under sections 212(i) and 212(a)(9)(B)(v) 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(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.