

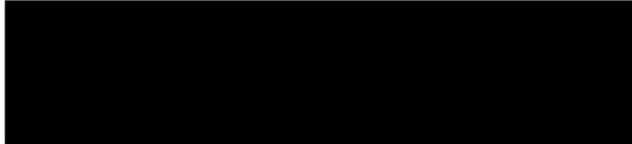
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Services

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FILE: [REDACTED] Office: ROME, ITALY Date: DEC 28 2007

IN RE: Applicant: [REDACTED]

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

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Rome, Italy, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The applicant is a native and citizen of former Yugoslavia. The record indicates that the applicant entered the United States in January 1994 with a forged Italian passport. The applicant was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission into the United States by fraud or willful misrepresentation. The applicant thus seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The applicant was also found inadmissible under 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 from April 1, 1997, the date of the enactment of the unlawful presence provisions, until being deported in August 1999. The applicant, therefore, also 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).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated November 4, 2005.

In support of this appeal, counsel submits a brief, dated December 27, 2005; a copy of the Form I-130, Immigrant Petition for Relative, approval notice; letters from the applicant's spouse's physician outlining her medical situation and copies of receipts for corresponding prescriptions and treatment sessions; a letter from the applicant's spouse, dated November 20, 2005; travel receipts and photos related to the applicant's spouse's visits to the applicant in Montenegro; a copy of the applicant's marriage certificate; and numerous articles regarding the country conditions in Serbia and Montenegro. The entire record was reviewed and considered in rendering this decision.

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

- (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.

Section 212(i) of the Act provides that:

- (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 immigrant 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...

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.

Section 212(a)(9)(B)(v) of the Act provides that:

(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...

Waivers of the bar to admission under section 212(i) of the Act resulting from a violation of section 212(a)(6)(C) of the Act, and waivers of the bar to admission under section 212(a)(9)(B)(i)(II) of the Act resulting from a violation of section 212(a)(9)(B)(v) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Extreme hardship to the applicant himself is not a permissible consideration under the statute. In the present case, the applicant's spouse, married to the applicant since September 1999, is the only qualifying relative, and any hardship to the applicant cannot be considered, except as it may affect the applicant's spouse. 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).

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 (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 *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The United States Supreme Court additionally 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 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 held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

To begin, counsel contends that the applicant’s spouse would suffer extreme hardship as a result of relocating to Montenegro to reside with the applicant. As stated by counsel, the applicant’s spouse has a history of depression and anxiety which has worsened due to the applicant’s physical absence. The applicant “...relies on the support of her parents, friends, community and church—support, which is as vital to her health as the medical treatment she receives...” *Brief on Appeal*, dated December 27, 2005. Dr. [REDACTED] the physician who has been treating the applicant’s spouse intermittently since 1996, but actively since October 2002, further details the applicant’s spouse’s medical situation. As Dr. [REDACTED] states, “...I am writing to you at the request of my patient [REDACTED] [the applicant’s spouse] who has been under my active care since October 2002... The prolonged separation took its toll on [REDACTED] as her sleeplessness, decrease in appetite (resulting in a 20 lb weight loss in an already petite woman), and increased anxiety affected her daily functioning. We began to meet regularly and she accepted a medication trial to try to prevent her further decline... As her long-sought goal remains, and at times, seems to recede further into the future, she struggles daily with profound depression and a sense of extreme hopelessness...” *Letter from [REDACTED] M.D.*, dated August 6, 2003.

In a second letter provided by Dr. [REDACTED] he states that the applicant’s spouse “...sought my help during a rough period in her adolescence... When last we spoke in 1996, she was enrolled in college and functioning well. During her college years, she met and married [REDACTED] [the applicant]... [REDACTED] [the applicant’s spouse] began to exhibit loss of appetite with a 15 lb. weight loss, tearfulness, insomnia, inability to enjoy activities she previously enjoyed, social withdrawal, and increased anxiety and a sense of dread and helplessness. More recently, she presents as defeated and hopeless with a decreased ability to focus on anything other than re-uniting with her husband. These symptoms are consistent with the physiological response to severe prolonged trauma and the effect on this once active and vibrant woman are daunting...” *Letter from [REDACTED] M.D.*, dated October 10, 2002. Counsel has provided copies of receipts evidencing

the applicant's spouse's numerous visits with Dr. [REDACTED] for treatment, and copies of the applicant's spouse's prescriptions for Paxil, an anti-depressant that the applicant's spouse has been taking since 2002.

The applicant's spouse further discusses her medical situation. As stated by the applicant's spouse, "...I have had a past history with depression and was hospitalized in 1994 because of it. With extensive treatment and medication, I was able to overcome it and move on....This past year has been very difficult; I have been seeking treatment for depression, anxiety and obsessive-compulsive disorder from psychiatrist Dr. [REDACTED] since November 2002. He is currently treating me with 50 mg. of Paxil, an anti-depressant/anti-anxiety medication and also with psychotherapy every four weeks. My depression and anxiety have increased recently, due to the added stress of not having [REDACTED] [the applicant] in this country...Dr. [REDACTED] feels my treatment would still need to continue with a move to Yugoslavia, and in [REDACTED] town, or any of the nearby towns, there aren't any psychiatrists or psychologists who could treat me. Even if there were, they would have to be fluent in English because I do not speak the Serbo-Croatian language. This would be very unlikely since there are very few citizens who speak English at a conversational level..." *Letter from [REDACTED]*, dated July 28, 2003.

In addition to the concerns outlined with respect to the applicant's spouse's medical situation, the applicant's spouse contends that she would suffer economic hardship and potential danger if she were to relocate to reside with the applicant. The applicant's spouse states that if she were to relocate "...I would not be able to teach there because of the limited openings and the language barrier. I would also not have the opportunity for quality healthcare or affordable medical benefits...I would not be able to find any work in Yugoslavia, as my husband's family who are natives cannot..." *Id.* at 2. The financial and career instability would lead to a significant decline in the applicant's spouse's standard of living. Moreover, the applicant's spouse is concerned for her safety were she to relocate, due to political unrest and turmoil in Montenegro. As she states "...recently, a bullet ripped through [REDACTED] [the applicant's] home, damaging a window and narrowly missing him..." *Id.* at 2.

Finally, the applicant's spouse states that relocation to Montenegro to reside with the applicant would mean "...leaving my family, my friends, my colleagues, my church, and mental health counseling. This ordeal has had a toll on my emotional state..." *Letter from [REDACTED]*, dated November 20, 2005. The applicant's spouse is a practicing Catholic and attends mass regularly. As referenced by the applicant's spouse, "...the region of Montenegro where my husband lives has a majority of Muslims and a small percentage of Orthodox Christians...I would not be able to attend mass every Sunday because there aren't any Catholic churches in the region where he lives. Even if there was a Catholic church, I wouldn't be able to understand the mass because of the language barrier..." *Supra* at 3.

Based on the record, it has been established that the applicant's spouse would suffer extreme hardship were she to relocate to Montenegro to reside with the applicant, due to her unstable mental health situation, the financial setbacks that the applicant's spouse would encounter which would have a direct impact on her quality of life, the lack of mental health resources and a support network in Montenegro and concerns for her safety due to violence and turmoil in the region.

Counsel also contends that the applicant's spouse would experience extreme hardship were she to remain in the United States without the applicant. As previously documented by the applicant's spouse's physician, the applicant's spouse's mental and physical condition has worsened significantly since the applicant's removal and inability to return to the United States. She struggles daily with "...profound depression and a sense of extreme hopelessness..." *Letter from* [REDACTED] *M.D.*, dated August 6, 2003. She has lost significant amounts of weight, is suffering from insomnia, and the inability to enjoy activities she previously enjoyed. Dr. [REDACTED] further states that "...although [REDACTED] [the applicant's spouse] has the complete support of her family, these years have been likewise traumatic for them. Her paternal uncle was diagnosed with cerebral metastases (brain cancer) in June 2001 at age 48. On that same day, [REDACTED] only brother, age 28, was diagnosed with testicular cancer with lymph node involvement. [REDACTED] and [REDACTED] [the applicant] spoke daily during this extreme hardship but his long-distance love and support could not prevent [REDACTED] from declining psychologically..." *Letter from Dr.* [REDACTED] *M.D.*, dated October 10, 2002.

Moreover, due to the applicant's immigration situation, the applicant's spouse has incurred numerous expenses; she has had to pay for lawyers, plane trips to visit the applicant, and calling cards to talk to the applicant. As the applicant's spouse states, "...Two months is really the most time I can spend over there at once because of all my financial obligation, such as my college loans, health insurance, car insurance etc. Each trip I make costs at least \$1500. About \$1000 for the plane ticket plus money to live on while I'm there..." *Letter from* [REDACTED] *c.*, dated July 13, 2001. Finally, the applicant's spouse has also been prevented from accepting a full-time teaching position due to her need for time away to visit with the applicant or deal with the immigration issues; only being able to accept substitute teaching jobs has led to her losing out on the ability to develop tenure or a pension. *Supra* at 1.

Due to the applicant's spouse's medical situation, the financial hardship of having the applicant so far away, the propensity for depression and deterioration and her need for her familial, church and community support network it has been established that the applicant's spouse would experience extreme hardship if the applicant were unable to return to the United States and live with the applicant's spouse. The applicant's spouse needs the emotional, psychological and physical support that the applicant would provide; the applicant's continued absence would be extreme for the applicant's spouse.

The AAO finds that the applicant's spouse would face extreme hardship if the applicant is required to remain outside the United States. The applicant's spouse is likely to face serious setbacks in her mental condition without the applicant's support and assistance, as attested to by a medical professional, financial hardship and career instability. The AAO also finds that the applicant's spouse would face extreme hardship if she were to relocate to Montenegro to be with the applicant. The record demonstrates that relocating at this time would be an extreme hardship to the applicant's spouse, emotionally, physically and financially; the applicant's spouse would experience a significant decrease in the quality of care and the possibility of further deterioration with respect to her depression and anxiety, and she would also experience a significant decline in her quality of life.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of

“extreme hardship.” It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship the applicant’s spouse would face if the applicant were to remain in Montenegro, regardless of whether the applicant’s spouse relocates or remains in the United States, the U.S. citizenship status of the applicant’s family members, the applicant’s apparent lack of a criminal record, and the passage of over eight years since the applicant’s immigration violation. The unfavorable factors in this matter are the applicant’s willful misrepresentation to an official of the United States Government in seeking to obtain admission to the United States and periods of unauthorized presence and employment.

While the AAO does not condone the applicant’s actions, the AAO finds that the favorable factors, in particular the extreme hardship imposed on the applicant’s spouse as a result of his inadmissibility, outweigh the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary’s discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.