



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

H2

[REDACTED]

FILE:

[REDACTED]

Office: ALBANY, NEW YORK

Date: OCT 22 2007

IN RE:

[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)

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 (OIC), Albany, New York, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Montenegro (formerly Yugoslavia) who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States using a passport in someone else's name. The record indicates that the applicant's spouse is a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her United States citizen husband and two United States citizen children.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Officer-In-Charge Decision*, dated January 5, 2006.

On appeal, the applicant, through her representative, contends that the OIC "...failed to consider the cumulative effect of all the hardship that the applicant showed her USC husband and children will suffer if she is forced to return to Montenegro." *Attachment to Form I-290B*, filed February 6, 2006.

The record includes, but is not limited to, a brief by the applicant's accredited representative, affidavits from the applicant and her husband, and medical reports regarding the applicant's United States citizen daughter. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (i) 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.
- ...
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

- (i) (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...

The AAO notes that the record contains several references to the hardship that the applicant's United States citizen daughter would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's daughter will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that on February 14, 2002, the applicant entered the United States by presenting a passport in the name of [REDACTED]. On December 5, 2002, the applicant married [REDACTED], a naturalized United States citizen, in New York. On December 10, 2002, the applicant's daughter, [REDACTED], was born in New York. On January 31, 2003, the applicant's husband filed a Form I-130 on behalf of the applicant. On August 7, 2003, the Form I-130 was approved. On November 5, 2004, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) and a Form I-601. On June 23, 2005, the applicant's son, [REDACTED], was born in New York. On January 5, 2006, the OIC denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. The factors include 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.

The applicant's representative asserts that the applicant's United States citizen spouse and children would face extreme hardship if the applicant were removed to Montenegro. *Appellant's Brief*, page 3, filed March 3, 2006. "Also affected will be [REDACTED]. His parents and siblings reside in the United States and the family is a very close family. [REDACTED] works in the family restaurant and it will be extremely difficult for him to work and take care of his children without his wife, especially taking into account the medical condition of their oldest daughter and the care of an infant. [The applicant] is the also the primary

caregiver for her husband's parents. Her mother-in-law suffers mental instability and her father-in-law is an amputee. [The applicant] provides the physical care they need so that her husband is free to work in the family restaurant to provide the financial support for his family." *Id.* at 3-4. The applicant claims that if she had "to leave the United States, it will be devastating for [her] family." *Applicant's Affidavit*, dated September 28, 2004. The AAO notes that the applicant has not established that her husband has no transferable skills that would aid him in obtaining a job in Montenegro. The applicant's husband is a native of Yugoslavia, who spent his formative years in Yugoslavia, and it has not been demonstrated that the applicant and her husband have no family ties in Montenegro. Additionally, the applicant has not demonstrated that her children could not join her in Montenegro. It has not been established that the applicant's children, who are 2 and 4 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Montenegro. The applicant has provided documentation establishing that her daughter was treated for dislocated hips as an infant; however, [redacted] states the applicant's daughter "is doing satisfactory," but will need to have regular check-ups. *Progress Note* by [redacted] M.D., *The University of Vermont College of Medicine, Orthopaedics and Rehabilitation Health*, dated November 4, 2003; see also *Affidavit of* [redacted] dated September 28, 2004 ("Since her diagnosis, [redacted]'s condition has improved, but she still must see the doctor regularly for check ups."). The AAO notes that there was no documentation submitted establishing that the applicant's daughter could not receive treatment for her medical condition in [redacted]. Further, there is no indication that the applicant's daughter has to remain in the United States to receive treatments. The applicant's representative states "[a]nother concern of [redacted] is the fact that [the applicant's] parents and community treated her badly when they learned of their relationship. He is naturally very worried about the treatment she will receive if she returns to [redacted] without her husband." *Appellant's Brief*, page 7, *supra*. The applicant claims that her "family and [her] community rejected [her]," after she was intimate with her husband, before they got married. *Applicant's Affidavit*, *supra*. As noted above, hardship the alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he accompanied his wife to Montenegro.

In addition, the applicant's representative does not establish extreme hardship to the applicant's United States citizen spouse if he remains in the United States, maintaining his employment, adequate healthcare for his children, and in close proximity to his family. The applicant's husband states he does "not wish to return to Bosnia because there is nothing there for [him]. [His] family lives in the United States, [his] business is here, and Adela's doctors are here. Without [him], [his] parents and [his] sisters would not be able to make a living here." *Affidavit of* [redacted], *supra*. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's husband states the applicant is "the sole care provider for [their] daughter." *Id.* However, the AAO notes that the applicant's spouse has not established that his family members, who he resides near, could not help him with taking care of the children. Further, the record fails to demonstrate that the applicant will be unable to contribute to her husband's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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, 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, *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 *Hassan, supra*, the Ninth Circuit Court of Appeals 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 being deported. The AAO recognizes that the applicant's United States citizen husband will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(i) 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.