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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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Services

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FILE:

Office: BALTIMORE, MD

Date: JUL 09 2009

IN RE:

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:

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Baltimore, Maryland and the Administrative Appeals Office (AAO) dismissed the current appeal as untimely filed. The AAO now reopens the matter on its own motion based on evidence that the filing of the appeal was timely. The appeal will be dismissed.

The applicant is a native and citizen of Hungary who was found to be 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 having attempted to procure admission into the United States by fraud or willful misrepresentation and under section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for more than 180 days but less than one year and seeking readmission within three years of her last departure from the United States. The applicant is married to a naturalized United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 19, 2006.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant had failed to establish extreme hardship to her qualifying relative, as necessary for a waiver under the Act. *Form I-290B*.

In support of the waiver, the record includes, but is not limited to, tax statements for the applicant and her spouse; statements from the applicant's spouse; a car insurance policy; bank statements; a property deed; a Form W-2 for the applicant's spouse; a dentist license and practice analysis for the applicant's spouse; a statement from an apartment manager; a certificate of life insurance; a statement from a dance theatre; and statements from the applicant. 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 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

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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.

(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.

The record reflects that the applicant was admitted to the United States on February 4, 1998 on a B-2 visa valid until August 3, 1998. *I-94 Arrival/Departure Display*. The applicant extended her nonimmigrant status. *Case Status Search noting the applicant's Form I-539, Application to Extend or Change Nonimmigrant Status approved*. According to the applicant, she received an additional six-month stay. *Statement from the applicant*, dated March 5, 2009. The applicant remained in the United States until January 10, 1999. *Record of Sworn Statement*, dated October 29, 1999. The applicant worked illegally from October 1998 to January 1999. *Statement from the applicant's spouse*, dated March 3, 2005. The applicant gained admission to the United States on March 13,

1999 on a B-2 visa valid until September 12, 1999. *I-94 Arrival/Departure Display*. She remained until September 11, 1999. *Record of Sworn Statement*, dated October 29, 1999. The applicant worked illegally from March 1999 to September 1999. *Form G-325A, Biographic Information, for the applicant; Statement from the applicant's spouse*, dated March 3, 2005. On October 29, 1999, the applicant attempted to gain admission to the United States. *I-94 Arrival/Departure Display*. During secondary inspection, she admitted that she had previously worked without authorization and departed the United States. *Form I-275, Withdrawal of Application for Admission/Consular Notification*, dated October 29, 1999. On March 19, 2000, the applicant attempted to gain admission to the United States without documentation at Buffalo, New York and was denied admission. *Form I-160A, Notice of Refusal of Admission/Parole*. The applicant was admitted to the United States on August 20, 2003 on a K-1 visa valid until November 19, 2003. *Form I-94, Departure Card*. The AAO finds that the applicant engaged in willful misrepresentation of a material fact by gaining admission to the United States on B-2 tourist visas, as her intent in gaining admission to the United States was not for tourism or pleasure, but to work. As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

However, contrary to the District Director's finding, the record does not establish that the applicant is also inadmissible to the United States pursuant to the unlawful presence provisions of section 212(a)(9)(B) of the Act. The applicant did not begin to accrue unlawful presence when she violated her nonimmigrant status by accepting employment in the United States. The accrual of unlawful presence does not begin on the date of a status violation, but either on the day after the expiration of an alien's Form I-94 or the date on which USCIS or an immigration judge determines a status violation, whichever is earlier. As the record does not demonstrate that the applicant overstayed her visas or that USCIS made a status determination in her case, the AAO finds that the applicant did not accrue unlawful presence and is not inadmissible under section 212(a)(9)(B) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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. The plain language of the statute indicates that hardship that the applicant or his children would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Hungary or the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse relocates with the applicant to Hungary, the applicant needs to establish that he will suffer extreme hardship. The applicant's spouse was born in Paraguay and his parents continue to reside there. *Form G-325A, Biographic Information, for the applicant's spouse.* The applicant's spouse states that he shares custody of his three children with his ex-wife. *Statement from the applicant's spouse*, dated June 29, 2006. He also asserts that the custody agreement requires that neither parent reside more than 50 miles away from the other. *Id.* While the AAO acknowledges these statements, it notes that the record does not include the court order specifying the custodial rights of and limitations on the applicant's spouse and his ex-wife. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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 applicant's spouse notes that he is financially responsible for \$4,000.00 in child support until his children reach 18 years of age, and that his children are 5 to 12 years old. *Id.* He notes that he is responsible for his ex-wife's expenses and that she does not work. *Statement from the applicant's spouse*, dated June 29, 2006. The AAO observes that the record does not include evidence of the financial obligations of the applicant's spouse regarding his children and ex-spouse. As previously noted, going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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 AAO also notes there is nothing in the record that addresses whether the applicant's spouse would be able to obtain employment in Hungary and contribute to his children's financial well-being from outside the United States. The record does not address whether the applicant's spouse speaks Hungarian and whether his language abilities, or lack thereof, would affect his employment opportunities as well as cultural adjustment to Hungary. Furthermore, the record does not include published country conditions reports documenting the economic situation and employment opportunities in Hungary. As previously noted, going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)). As such, when looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Hungary.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The record does not address how the applicant's spouse would be affected if he remains in the United States while the applicant is in Hungary.

The AAO acknowledges the applicant's spouse would face difficulties in being separated from the applicant. However, 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 being deported. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in 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)(6)(C) 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.