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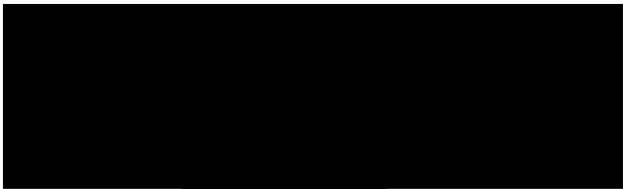
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Services

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FILE:



Office: VIENNA

Date:

MAY 15 2009

IN RE: Applicant:



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

The record establishes that the applicant, a citizen of Montenegro, procured entry to the United States in June 1999 under the Transit Without Visa (TWOV) program; he presented a Slovakian passport that did not belong to him. He was thus found to be inadmissible to the United States pursuant to 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 procured entry to the United States by fraud and/or willful misrepresentation. The applicant is applying for 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 his U.S. citizen spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated November 17, 2006.

In support of the appeal, the applicant submits a statement from his U.S. citizen spouse, dated February 20, 2007 and a letter in support from the applicant's spouse's employer, dated February 20, 2007. The entire record was reviewed and considered in arriving at a decision on the appeal.

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...

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.

The applicant's U.S. citizen spouse contends that she will suffer emotional hardship if the applicant is unable to reside in the United States due to his inadmissibility. In a declaration, the applicant's spouse states that she will suffer emotional hardship due to the close relationship she has with her spouse, and because she needs her husband "physically, mentally and financially...." *Letter from* [REDACTED] dated February 20, 2007. She further notes that she and the applicant want to start a family but without the applicant's physical presence in the United States, starting a family is not possible. *Letter from* [REDACTED] dated September 20, 2006.

No documentation has been provided to corroborate the applicant's spouse's assertions that she will suffer extreme hardship were the applicant unable to reside in the United States. Nor has it been established that the applicant's spouse will suffer extreme hardship were she to continue to travel abroad to visit the applicant on a regular basis, as she has been doing since they started dating in 2002, and more importantly, since their marriage in 2004. 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)). Finally, while the AAO sympathizes with the applicant and her spouse regarding their desire to start a family, all couples separated by removal have to make alternate arrangements if they want to conceive. It has not been documented that such arrangements rise to the level of extreme hardship.

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation

nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases.

As for the financial hardship referenced in the record, the AAO notes that courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

No documentation has been provided that outlines the applicant's and her spouse's current financial situation, including income, expenses, assets and liabilities, and their financial needs, to corroborate the applicant's spouse's assertion that she will suffer extreme financial hardship if the applicant is unable to reside in the United States. Moreover, it has not been established that the applicant is unable to obtain gainful employment abroad, thereby assisting his spouse financially should the need arrive. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she 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 based on the record. The AAO concludes that although the applicant's spouse may need to make alternate arrangements with respect to her own emotional and financial care were the applicant unable to reside in the United States, it has not been established that such arrangements would cause the applicant's spouse extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. With respect to this criteria, the applicant's spouse asserts that she has "lived in the U.S. for almost ten years, and this is the life I am used to. I don't think I could go back to living in Europe. I came from there as a refugee. I am Bosnian and Eastern Orthodox; [the applicant] is Muslim from Montenegro. I don't

think it would be possible for us to live together anywhere in the former Yugoslavia without having trouble.... *Supra* at 4.

The applicant has not provided any evidence to establish that his spouse obtained refugee status in the United States. Moreover, no evidence of the basis for the applicant's spouse's procurement of refugee status has been provided. Furthermore, the record establishes that the applicant's spouse has made numerous trips to her home country since arriving in the United States in 1997, for weeks and/or months at a time, to visit her parents and/or the applicant. In fact, the AAO notes that she traveled to her home country in 1999, 2000, 2001, 2002 (on three separate occasions), 2003 and "four or five times since we got married [in 2004]...." *Supra* at 1-3. As such, it has not been established that the applicant's spouse will suffer extreme hardship were she to return to the region she fled more than ten years ago to accompany the applicant due to his inadmissibility.

Finally, with respect to the applicant's spouse's concerns relating to religious strife were she to reside in Montenegro, as she is Eastern Orthodox and the applicant is Muslim, the U.S. Department of State notes that 74 percent of the population is Orthodox and 18 percent of the population is Muslim and further states the following regarding the status of religious freedom in Montenegro:

The Constitution provides for freedom of religion, and other laws and policies contribute to the generally free practice of religion. The law at all levels protects this right in full against abuse, either by governmental or private actors.

The Constitution provides for the right to freedom of thought, conscience, and religion, as well as the right to change one's religion or belief and the freedom to, individually or collectively, publicly or privately, express that religion or belief by prayer, preaching, customs, or rites. No one is obliged to declare one's own religious beliefs.

*Montenegro-International Religious Freedom Report-2008, U.S. Department of State.* As such, there is no evidence to establish that residing in Montenegro with the applicant would cause the applicant's spouse hardship due to religious and/or societal discrimination.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the financial and emotional hardship she would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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. The waiver application is denied.