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

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MAR 06 2010

FILE: [REDACTED] Office: VIENNA, AUSTRIA Date:

IN RE: Applicant: [REDACTED]

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

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).

Perry Rhew
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 applicant, [REDACTED], is a native of Yugoslavia and a citizen of Kosovo who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated July 26, 2006.

On appeal, the applicant states that he needs to take care of his wife, who is pregnant, and the child they are expecting. He claims that he intended to use a 50 Euro banknote to buy goods in a store and did not know that the banknote was forged. He maintains that forged banknotes are not easily identifiable and that any Kosovo citizen could have obtained such a banknote due to their large number in circulation.

The AAO will first address the finding of inadmissibility. Section 212(a)(2) of the Act states that:

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

- (I) a crime involving moral turpitude (other than a purely political offense)
or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines “conviction” for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

The record shows that the District Court in Mitrovica of the Interim Administration of Kosovo found the applicant guilty of intending to pass into circulation a fake banknote of 50 Euro which the applicant knew to be fake in order to purchase items in a shop. The applicant was sentenced to serve a prison term of four months; however, his sentence was suspended on the condition that he not commit a new penal violation within a one year period. The applicant was ordered to pay the court an extra payment of 50 Euro.

In *Matter of K-*, 7 I&N. Dec. 178 (1956), the Board of Immigration Appeals (BIA) found that the passing or possession of counterfeit coins is a crime involving moral turpitude where the statute specifically contains the words "with intent to defraud." Although the AAO finds the translation of the submitted criminal record somewhat difficult to understand, it is clear that the court found that the applicant intended to defraud by passing into circulation a valueless banknote. Thus, in applying the holding of *Matter of K-* here, the AAO finds that the applicant's offense involves moral turpitude, and he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

A waiver is available for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act. Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

...

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen spouse and his U.S. citizen daughter. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The BIA in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative pursuant to section 212(i) of the Act. 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. *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider

the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Evidence in the record includes letters, birth certificates, medical records, and other documentation. In rendering this decision, the AAO has carefully considered all of the evidence in the record.

Extreme hardship to the applicant’s qualifying relatives must be established in the event that they remain in the United States without the applicant, and alternatively, if they join the applicant to live in Kosovo. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

With regard to the hardship experienced by the applicant’s spouse if she remains in the United States without the applicant, the letters by the applicant’s spouse convey that she has a close relationship with her husband and that she needs him in the United States to provide financial assistance and help take care of their daughter. She asserts that she is afraid of living alone.

Although the applicant’s spouse indicates that she requires financial assistance from her husband, she has provided no records of her monthly income and financial obligations. In the absence of such documentation, the AAO cannot determine whether her income is insufficient to meet her monthly financial obligations. Furthermore, the record reflects that the applicant is employed in Kosovo as a mechanic. No documentation has been provided to establish that the applicant is unable to financially assist his wife. 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 applicant’s spouse asserts that she is concerned about separation from her husband. Family separation must be considered in determining hardship. See, e.g., *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (“the most important single hardship factor may be the separation of the alien from family living in the United States”). However, courts have found that family separation does not conclusively establish extreme hardship. In *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), states that “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991).

After careful consideration of the evidence in the record, the AAO finds that the situation of the applicant’s spouse and daughter, if they remain in the United States without the applicant, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO conveys that the emotional hardship to be endured by the applicant’s spouse and daughter, as a result of separation from the applicant, is not unusual or

beyond that which is normally to be expected upon an applicant's bar to admission to the United States. *See Hassan and Perez, supra.*

In considering all of the hardship factors presented in the aggregate, the AAO finds that the applicant's spouse has shown that she would experience emotional hardship if separated from her husband; however, her hardship has not been shown to be "unusual or beyond that which would normally be expected" upon an applicant's bar to admission. With regard to financial hardship, the applicant failed to provide documentation of his wife's income and expenses, which are needed to support her claim of experiencing extreme financial hardship if she remained in the United States without her husband. Furthermore, no documentation has been provided of the applicant's income in Kosovo.

The applicant's spouse asserts that she cannot return to Kosovo because their house was destroyed during the war. However, the record reveals that the applicant is presently living in Kosovo. The applicant's spouse has not established why she would experience extreme hardship if she lived with her husband in Kosovo where he currently resides.

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under sections 212(h) of the Act.

Because the applicant is statutorily ineligible for relief, no purpose is served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.