



U.S. Citizenship
and Immigration
Services

[REDACTED]

H2

DATE: **DEC 08 2012**

Office: VIENNA, AUSTRIA

FILE: [REDACTED]

IN RE:

Applicant: [REDACTED]

APPLICATION:

Applications for Waivers of Grounds of Inadmissibility pursuant to section 212(h) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(h)

ON BEHALF OF APPLICANT:

[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Vienna, Austria, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of the former 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), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the spouse of a U.S. citizen and the parent of a minor U.S. citizen child. He seeks a waiver of inadmissibility pursuant to section 212(h), 8 U.S.C. § 1182(h), in conjunction with an immigrant visa application, in order to obtain admission to the United States as a lawful permanent resident.

The director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to the qualifying relative, as required for a waiver under section 212(h) of the Act, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated June 9, 2010. The director further found that the applicant did not merit a favorable exercise of discretion, even if extreme hardship had been demonstrated.

On appeal, counsel contends that the director failed to consider the hardships to the applicant's U.S. citizen wife in the aggregate and erred in not giving proper weight to the psychological evaluation of the wife. *Form I-290B, Notice of Appeal or Motion*, received July 6, 2010. He further asserted that the director failed to consider the hardship to the applicant's minor daughter, who is also a qualifying relative, and did not address the hardship to the qualifying relatives upon relocation. *See id.* Counsel also contends that the director made erroneous factual determinations regarding the applicant's wife's credibility and in concluding that she does not reside with her parents. Finally, counsel asserts that the denial of the waiver application was an abuse of discretion.¹

The record of evidence includes, but is not limited to, counsel's briefs; the applicant's statements; the statements from the applicant's U.S. citizen wife; the psychological evaluation of the applicant's wife; paycheck summaries for the applicant's wife; California Income and Expense Declaration forms executed by applicant and his wife; MoneyGram report of funds transferred to applicant in Kosovo; photographs of the applicant's wife and family in the United States and of the applicant's home in Kosovo; and the applicant's conviction records. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

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

¹ On appeal, counsel also maintains that the director's consistent references to the applicant's wife as [REDACTED] instead of [REDACTED] is demeaning or questioning her marital status. *See* Counsel's brief, dated July 29, 2010, at 4, 11. We note that, unlike [REDACTED] the title [REDACTED] is the default honorific title prefixed to a woman's name that is not dependent upon, or reflective of, her marital status. Thus, we do not find that the director's use of the title [REDACTED] before the applicant's wife's name to be improper or a derogatory reference to her marital status. Moreover, we note that the applicant is the beneficiary of a visa petition by his wife, which the U.S. Citizenship and Immigration Services already approved on the basis that the couple's valid marital relationship had been established.

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

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The record reflects that the applicant resides permanently in Kosovo. He is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed by his U.S. citizen wife. The record indicates that the applicant was convicted of knowingly attempting to pass counterfeit currency in violation of Article 168, para. 1, of the Criminal Code of Yugoslavia on December 8, 2006. The criminal records specify that the applicant was found guilty of intentionally putting a fake banknote of 50 Euro into circulation by using it to purchase goods. The U.S. Consular Officer in Skopje, Macedonia noted that a conviction under the above statute provides for a term of "imprisonment for not less than one year." The applicant was sentenced to four months imprisonment, which was suspended on the condition that he does not commit any penal violations during the next year. He was also ordered to pay a fee of 50 Euro by the court. The applicant has submitted court records indicating that his motion for removal of punishment from the register of convicts was granted, after verification that he had complied with the conditions of the original judgment. Based on this conviction, the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant's first Form I-601 was denied on July 26, 2006, and the AAO dismissed the applicant's subsequent appeal. He filed a second Form I-601 in August 2009, which was denied on June 9, 2010 and forms the basis of the instant appeal.

As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding to be in error, the AAO will not disturb the determination of inadmissibility under section 212(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver under section 212(h) to overcome inadmissibility. The qualifying relatives for purposes of this waiver are the applicant's U.S. citizen wife and minor daughter.

Section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

Extreme hardship is “not a definable term of fixed and inflexible content or meaning,” but “necessarily depends upon the facts and circumstances peculiar to each case.” *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one’s present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm’r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “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.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*,

19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

On appeal, counsel contends that the applicant and his family have set forth sufficient factors which, considered in the aggregate, establish that the applicant's U.S. citizen wife and child would suffer extreme hardship if they remain separated from the applicant. The applicant's wife, in her statement of April 27, 2010, asserts emotional hardship as a result of the separation. She states that due to the stress of her husband's immigration case, she has been making mistakes at work, is barely able to drive to work at times, and has had to leave work early on occasion. The record includes a psychological evaluation of the applicant's wife, prepared by a licensed clinical psychologist, Dr. [REDACTED] Ph.D., following a single examination conducted on March 29, 2010. Dr. [REDACTED] diagnosed the applicant's wife as suffering from Major Depressive Disorder (single, moderate) and Posttraumatic Stress Disorder (PTSD). The report indicates that the applicant's wife's depression "appears to be situationally based rather than an inherent mental health problem," and arises from the stress and uncertainty of her future with her husband. *See* Psychological Evaluation at 12. As such, Dr. [REDACTED] notes that the depression would be resolved should the applicant be allowed admission to the United States, but would likely worsen significantly if admission was refused. According to the evaluation, the applicant's wife reported thinking about suicide but denied any intention of carrying it out. It further states that she was also traumatized by her husband's talk of suicide at the end of her last visit with him in Kosovo. She reported that she is stressed and sad about her husband and that she does not have energy even to play with her daughter. Dr. [REDACTED] reports that the applicant's wife describes her situation as a Catch-22, where her husband cannot come to the United States and she cannot go to Kosovo due to her PTSD, resulting from the trauma she experienced during the conflict there in 1999 when she witnessed her grandparents being killed. The evaluation indicates that the applicant's wife experiences flashbacks and has nightmares of her experiences in the war and that she is "retraumatized" every time she returns to Kosovo to visit her husband. *See id.* at 12.

While we respect Dr. [REDACTED] findings, we note that applicant's wife's evaluation was based on a single interview, conducted only after the appeal of her husband's first waiver application was denied on March 6, 2010. Thus, it does not reflect that Dr. [REDACTED] diagnosis is grounded in extensive observation or testing, or any prior history of consultation with Dr. [REDACTED] or other mental health professionals. The evaluation indicates that the applicant's spouse reported that she has never sought and received any therapy or other treatment, and Dr. [REDACTED] does not address how the claimed disorders might be affected by such. The applicant's wife presumably has been suffering from PTSD since 1999, when she arrived in the United States, as well as the stress of her husband's uncertain immigration future since 2006. But despite the claimed PTSD and the lack of any treatment, the record shows that the applicant's wife has been able to graduate from school, successfully obtain and maintain steady employment, and raise and support her child with assistance of family members. Moreover, notably absent are letters from her parents, siblings, or other close relatives with whom she resides in the United States, and who may be able to corroborate and give clearer insight into how the applicant has been impacted by past trauma and her mental health issues.

We acknowledge that that the applicant's wife is suffering emotional distress because of the separation from her husband, and we do give some weight to Dr. [REDACTED] evaluation. However, as

noted in the evaluation, the depression appears situational, and there is insufficient evidence to demonstrate that the applicant's spouse has any longstanding mental health conditions or a heightened susceptibility to mental health disorders. While counsel appears to contend that the applicant's wife is more susceptible emotionally because of her past trauma, the record does not adequately support such a conclusion. The record does not adequately distinguish the emotional hardship experienced by the applicant's spouse from the common results of inadmissibility or removal of a spouse. Furthermore, in contrast to the asserted severity of the applicant's spouse's condition, the record shows that she has continued to be successfully employed, has raised her daughter, and has been able to visit her husband annually in Kosovo. 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 wife also contends that it has been stressful watching her then two-year-old (now five-year-old) daughter, missing her father. She states that her husband has not even been able to celebrate any of their daughter's birthdays and that the separation is killing her. We acknowledge that raising a daughter without the physical, emotional, and financial support of her father is difficult and emotionally taxing. However, the applicant's wife has been doing just that for approximately five years. We also observe that the applicant's wife states that she lives with her father, brother, and sister in law, who assist her in raising her daughter and with whom she appears to have a close relationship. There is no indication in the record that her family would no longer be willing or able to help her. The record also does not disclose any medical or health issues for the applicant's daughter impacting hardship.

The applicant's wife also notes that she has to support her husband in Kosovo, because the economy there is bad and he is unemployed there. She indicates that he is living with eight other family members in a house still partially destroyed by the war. The record contains a MoneyGram report, showing a summary of money wires to the applicant in Kosovo between January and December 2009, and a paycheck summary report from the applicant's wife's employer for the period beginning December 2005 until April 2010. Also provided are undated California Income and Expense Declarations (Form FL-150) for both the applicant and his wife, respectively. We note that this form is used by the California Judiciary in court proceedings in that state. It is unclear why the applicant and his wife, residents of Kosovo and Tennessee, respectively, would utilize these forms, but they appear to have been prepared solely for these proceedings to itemize their income and expenses. While the applicant's wife reports on the form that she has an approximate monthly income of \$1800.00 and monthly expenses totaling \$2230.00, we note that the record lacks more reliable financial records, including tax returns or transcripts, Internal Revenue Service Form W-2s, and social security earnings statements. Moreover, we observe that the applicant's wife's brother resides at the same residence and shares expenses, but it is unclear from the record how the expenses are broken down. *See* Form FL-150. The form also does not appear to include the monthly wire transfers to the applicant in Kosovo. Accordingly, the record lacks necessary and reliable evidence to enable the AAO to determine severity of the financial impact on the applicant's wife in living apart from her husband and continuing to support him in Kosovo.

After careful review of the evidence of record, the AAO finds that it does not demonstrate that the hardships faced by his U.S. citizen wife upon separation, considered in the aggregate, rise to the level of extreme hardship. While we recognize that the applicant's wife will endure emotional

distress and financial detriment due to the ongoing separation, the applicant has not shown the emotional and physical hardship his wife would suffer constitutes “significant hardship over and above the normal disruption of social and community ties” normally associated with deportation or refusal of admission. *Matter of O-J-O-*, 21 I&N Dec. at 385.

Similarly, the record does not establish that the applicant’s U.S. citizen daughter would suffer extreme hardship upon separation from the applicant. The applicant’s wife asserts that her daughter is growing up and is hurt by the fact that her father is not around like other fathers. We do not undermine the role of a father in a child’s life, and we recognize that separation will have an adverse and lifelong impact on the applicant’s daughter emotionally. The record shows that the applicant’s daughter is five years old, has never had her father physical presence on a daily basis in the United States, is supported by her mother, and has extensive close ties to her extended family members, with many of whom she resides. There is no indication that she has any mental or physical health issues that require additional support or any other special concerns. Accordingly, the applicant has not demonstrated that the emotional distress his daughter suffers, or will suffer, from their ongoing separation rises to the level of extreme hardship.

We also review the record to determine whether the applicant has demonstrated extreme hardship to his wife and child upon relocation to Kosovo. The record indicates that the applicant’s wife has returned to Kosovo every year since 2005 to visit her husband for approximately one to two months. She asserts that it is difficult for her to stay there long because she remembers all the horrors she witnessed during the war, including the killing of her paternal grandparents. She expresses her fear that war will happen again and that Kosovo has not been a safe place to live since the conflict. According to the psychological evaluation, the trauma she suffered in Kosovo is the cause of her PTSD, and she is “retraumatized” during her annual visits to Kosovo. *See Psychological Evaluation* at 12. We note that the applicant’s wife, during one of the many tests Dr [REDACTED] perform, drew a somewhat inconsistent picture of life when she visits her husband in Kosovo. *See id.* She drew a picture of her husband and her holding hands in the park in Kosovo and reported that they were so happy and never wanted to leave each other. Dr [REDACTED] concluded that the applicant’s wife feels complete with her husband, even though this was when she was in Kosovo.

However, the AAO takes administrative notice of the events of Kosovo conflict, beginning in 1998, and the atrocities committed during that time period. *See generally* Bureau of Consular Affairs, U.S. Dep’t of State, *Background Note: Kosovo* (Jan. 11, 2012) (noting the widespread atrocities committed against civilians and the ethnic cleansing carried out in Kosovo). Thus, it is understandable that the applicant’s wife experiences fear and uncertainty during her trips to Kosovo, as a result of her firsthand experiences during the war, and we recognize that it would be difficult for her to reside permanently there and raise her child there. Her fear is supported by a recent Department of State (DOS) report, which notes that although the situation in Kosovo has improved, ethnic tensions and sporadic incidents of violence continue to occur. *See generally* Bureau of Consular Affairs, U.S. Dep’t of State, *Country Specific Information: Kosovo* (Mar. 12, 2012). It also indicates that high unemployment and other economic factors have also encouraged criminal activity in Kosovo, and that most crimes are committed with weapons.

The applicant’s wife also cites her concerns about her husband’s inability to find employment and the poor economy in Kosovo. Her husband indicates that he has been seeking employment for four years. The applicant’s wife’s fears are corroborated by the 2012 Background Note, which indicates

that Kosovo's citizens are the poorest in Europe, with 45% of the labor force unemployed, 30% of the population living below the poverty line and 13% living in extreme poverty. Although the applicant's letter of May 8, 2010 indicates that he helps his father with the livestock and farming the land, we note that the Background Note indicates that "[i]nefficient, near-subsistence farming is common, the result of small plots, limited mechanization, and lack of technical expertise." Thus, the outlook for the applicant's wife finding future employment in Kosovo is extremely poor. In contrast, the applicant's wife has been steadily employed in the United States since finishing school, and has been with the same employer since 2005, helping to support her family, including her husband in Kosovo.

The applicant and his wife both indicate in their statements that the former still lives in the family home that was partially destroyed in the war and that they have been unable to rebuild it due to the poor economy. See Applicant's wife's statement, dated April 27, 2010. They indicate that the home is dangerous, with black mold growing on the walls and power wires creating a hazardous condition. They further contend that this is the home in which the applicant's wife and daughter stay during their trips to Kosovo, and in which the applicant resides with eight other family members sharing two bedrooms and a living room. Included in the record are pictures of what appears to be the rooms from this house.

We also note that the applicant's daughter is approximately five years old, has lived her entire life in the United States with her mother and extended family in what appears from the record to be a stable, secure and loving environment. The record indicates that her family is able to provide for her financially and that she has health insurance and medical care. In contrast, while the applicant's daughter has her father and his family in Kosovo for emotional and physical support, it is clear that her family there is not in the same position to support her. We again note her father's long term unemployment, the devastating economy in Kosovo, and the loss of even the income that the applicant's wife has been regularly sending him. We also observe that relocation would mean the loss of vital medical and health care that is readily accessible in the United States. The 2012 DOS Country Specific Information Report reports that health facilities are limited in Kosovo and medication in short supply.

Having carefully considered the applicant's and his wife's claims and the supporting evidence, we find that it demonstrates that the applicant's wife and daughter would suffer hardship upon relocation that rises to the level of extreme hardship. When considering, in the aggregate, the past trauma experienced by the applicant's wife in Kosovo during the war: her fear of returning there permanently; her close family ties in the United States; her strong financial ties in the United States; the high unemployment rate, poor economy and her husband's long term unemployment in Kosovo; and the extremely low and dangerous standard of living evidenced in this record, the AAO finds that the applicant has shown that the hardships that would be faced by his wife and child upon relocation are more than the common or typical result of a bar to admission.

However, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. Cf. *Matter of Ige*, 20 I&N Dec. at 886. Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would

not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, as the record does not establish that the hardships faced by the applicant's U.S. citizen wife and daughter upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship, the AAO finds that the applicant has failed to establish extreme hardship to his qualifying relatives as required under section 212(h). He, therefore, remains inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. Since the applicant failed to establish statutory eligibility for the waiver under sections 212(h), the AAO finds that no purpose would be served in considering whether the applicant merits the waiver in the exercise of discretion.

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

ORDER: The appeal is dismissed.