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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: PHILADELPHIA, PA

Date: APR 04 2008

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)  
of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Director/District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Romania who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant is married to a citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), which the Director/District Director denied, finding that the applicant failed to establish hardship to a qualifying relative. *Decision of the Director/District Director, dated June 6, 2003.* The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility.

Section 212(a)(9)(B)(i)(II) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, and again seeks admission within 10 years of the date of such alien's departure or removal, is inadmissible.

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and (II) are not counted in the aggregate.<sup>1</sup> For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.<sup>2</sup>

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* DOS Cable, note 1. *See also Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists). With regard to an adjustment applicant who had 180 days of unauthorized stay in the United States before filing an adjustment of status application, his or her return on an advance parole will trigger the three- and ten-year bar. Memo, Virtue, Acting Exec. Comm., INS, HQ IRT 50/5.12, 96 Act. 068 (Nov. 26, 1997).

The record reflects that the applicant entered the United States on May 29, 1996 and was granted an extension of stay to May 28, 1997. It shows that she filed an adjustment application on February 21, 1999,

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<sup>1</sup> Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998).

<sup>2</sup> *See* DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

and remained in the country until May 1999, at which she departed on advance parole. For purposes of calculating unlawful presence under section 212(a)(9)(B) of the Act, the applicant began to accrue time in unlawful presence on April 1, 1997. From April 1, 1997 to February 21, 1999, the date when she filed the adjustment application, she accrued over one year of unlawful presence. When the applicant voluntarily departed from the country and returned on advance parole, she triggered the ten-year-bar. Consequently, the Director/District Director was correct in finding her inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II).

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

Section 212(a)(9)(B) of the Act provides that:

- (v) Waiver. – The Attorney General [now Secretary, 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent 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. The qualifying relative in this case is the applicant’s husband. 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).

The record contains an affidavit, letters, birth and marriage certificates, divorce decrees, income tax records, and other documents.

In his affidavit the applicant’s husband conveys that his daughter, father, uncle, and sisters live in Pennsylvania. He states that he has worked seasonally for over 20 years as a self-employed carpenter specializing in house framing for new construction. He states that his overall health is fair and that he is being treated for a liver ailment. He states that he depends on his wife’s love, support, intelligence, and wisdom and cannot imagine life without her. He states that his wife received a bachelor of science degree in finance and accounting in Romania and is admired by family and friends. He states that in the United States his wife worked as a tax preparer and accountant and took coursework at a community college. He states that the economy in Romania is bad, that he does not speak Romanian, and would not be able to find work as a house framer there. He states that it would be difficult for his wife, who is 45 years old, to find work in Romania and that its unemployment rate is 12.2 percent. He states that in 2000 the net monthly average dollar wage dropped to \$92.00. The applicant’s husband states that medical care in Romania is not “up to [W]estern standards,” and although free, the hospitals are deplorable, according to a report from Mission Without Borders International. He states that his wife has siblings in Romania.

The July 23, 2003 letter by [REDACTED], conveys that the applicant's husband is under his care for a liver ailment, and requires further tests and treatment based on [REDACTED] diagnosis. [REDACTED] states that the applicant's husband cannot travel abroad and would experience hardship if the applicant had to leave the United States.

The record contains letters attesting to the good character of the applicant and her positive influence on her husband. It contains employment letters pertaining to the applicant. It also contains articles about Romania's economy and housing.

In her affidavit the applicant explains her lack of understanding of the ten-year-bar of inadmissibility.

The AAO has carefully considered all of the submitted evidence in rendering this decision.

"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 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. The BIA indicated that these factors relate to the applicant's "qualifying relative." *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).

Applying the *Cervantes-Gonzalez* here, extreme hardship to the applicant's husband must be established in the event that he remains in the United States, and in the alternative, that he joins the applicant to live in Romania. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record fails to establish that the applicant's husband would experience extreme hardship if he were to remain in the United States without his wife.

The letter by [REDACTED] states that the applicant's husband has a liver ailment and further tests and treatment are required. This, however, does not signify that the applicant's husband has serious medical problems and that his wife must remain in the United States to provide care. [REDACTED] states that the

applicant's husband should not travel, but he does not explain why he should not travel or for how long he is unable to travel.

With regard to family separation, courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), the Ninth Circuit upheld the BIA's 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). In *Shooshtary v. INS*, 39 F.3d 1049 (9<sup>th</sup> Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary's lawful permanent resident wife and two U.S. citizen children are separated from him. As stated in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), "[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)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9<sup>th</sup> Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt; and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

The record conveys that the applicant's husband is very concerned about separation from his wife. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's husband, 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 as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be experienced by the applicant's husband, is unusual or beyond that which is normally to be expected upon removal. See *Hassan*, *Shooshtary*, *Perez*, and *Sullivan*, *supra*.

The record fails to establish that the applicant's husband would experience extreme hardship if he were to join her to live in Romania.

The conditions in the country where the applicant's husband would join his wife are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

The letter by \_\_\_\_\_ reveals that the applicant's husband is being treated for a liver ailment and that further testing is needed. However, the applicant submitted no medical records of her husband's ailment.

Without medical records, the record fails to establish that the liver ailment is a severe health problem. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

Although the article by Mission Without Border's International conveys that health care in Romania is below Western quality standards and hospitals are deplorable, this generalized statement does not establish that healthcare throughout Romania is deplorable. In addition, "second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984).

The applicant's husband asserts that neither he nor his wife would find employment in Romania and he refers to articles to support his assertions. U.S. court and BIA decisions have held that difficulties in obtaining employment in a foreign country are insufficient to establish extreme hardship. See, e.g., *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (difficulty in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); and *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) ("difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment").

Furthermore, the employment hardship claims are largely based on the general economic conditions of Romania and not on any condition or circumstance unique to the applicant and her husband. "General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien." *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996), *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985).

The AAO notes that the applicant's wife had been employed in Romania as an economist for 10 years, from 1986 to 1996, before she arrived in the United States.

The applicant's husband is concerned about separation from his family in the United States. Courts in the United States have held that separation from one's family need not constitute extreme hardship. In *Sullivan v. INS*, 772 F.2d 609, 611 (9<sup>th</sup> Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families. And in *Dill v. INS*, 773 F.2d 25 (3<sup>rd</sup> Cir. 1985), the Third Circuit affirmed the finding of no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the BIA found the petitioner "is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child."

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme

hardship in the event that the applicant's husband were to join her to live in Romania. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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(a)(9)(B)(v) 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.