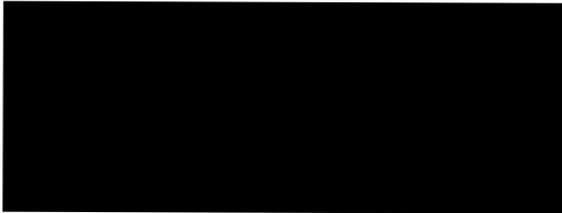




U.S. Citizenship
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Services

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FILE: [REDACTED] Office: VIENNA, AUSTRIA

Date:

JUL 07 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the 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.

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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Serbia and Montenegro who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), in order to reside with his wife in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the Officer in Charge*, dated February 7, 2007.

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.

In this case, the record indicates, and the applicant admits, that he entered the United States in October 1999 without inspection. In April 2001, the applicant married his first wife, who filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on his behalf in May 2001. On January 26, 2004, the applicant divorced his first wife. On January 29, 2004, the Form I-485 was denied. The following year, the applicant departed the United States in January 2005. On February 6, 2005, the applicant married his current wife, [REDACTED], in Montenegro. The applicant accrued unlawful presence from October 1999 until May 2001 when his ex-wife filed the

Form I-485, and again from January 30, 2004, after his Form I-485 was denied, until his departure from the United States in January 2005. The applicant, therefore, accrued unlawful presence for over one year. He now seeks admission within ten years of his 2005 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more.¹

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). 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).

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 under the Act. These 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.

It is not evident from the record that the applicant's spouse has suffered or will suffer extreme hardship as a result of the applicant's waiver being denied.

In this case, the applicant's wife, [REDACTED], states that if her husband's waiver application were denied, she would be unable to move to Montenegro with him. She states she visited him in Montenegro for one month, but found that the quality of life there is "very underprivileged." She claims she could not find a job in Montenegro because she does not speak Serbian fluently and is an "outsider" because she is Chinese. She contends she "felt disabled and discriminated . . . and even afraid" while she was in Montenegro. [REDACTED] states her husband's salary is not enough to give her the standard of life she has in the United States. In addition, she states she has no family in Montenegro and that her entire family is in the United States. [REDACTED] states she would like to start a family soon, but that she would not raise her family in Montenegro. *Letters from* [REDACTED], undated.

It is not evident from the record that the applicant's spouse would suffer extreme hardship as a result of the applicant's waiver being denied.

¹ The AAO notes that on the applicant's waiver application, the applicant indicated he filed an asylum application in October 2000, which was purportedly denied in January 2004. The record does not contain any indication the applicant ever filed an asylum application, nor do USCIS records indicate an asylum application has ever been filed.

As an initial matter, the AAO notes that the applicant and [REDACTED] married after the applicant's initial Form I-485 was denied and after accruing unlawful presence in the United States for more than one year. Therefore, the equity of their marriage, and the weight given to any hardship [REDACTED] may experience, is diminished as they began their marriage with the knowledge that the applicant might not be permitted to re-enter the United States. *See Ghassan v. INS*, 972 F.2d 631, 634-35 (5th Cir. 1992) (finding it was proper to give diminished weight to hardship faced by a spouse who entered into a marriage with knowledge of the alien's possible deportation); *Garcia-Lopes v. INS*, 923 F.2d 72, 76 (7th Cir. 1991) (less weight is given to equities acquired after a deportation order has been entered); *Carnalla-Munoz v. INS*, 627 F.2d 1004, 1007 (9th Cir. 1980) (a "post-deportation equity" need not be accorded great weight).

The AAO recognizes that [REDACTED] has endured and will continue to endure hardship as a result of the denial of her husband's waiver application and is sympathetic to the couple's circumstances. However, their situation, if [REDACTED] decides to remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (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).

In addition, there is insufficient evidence to show that [REDACTED] would experience extreme hardship if she moved to Montenegro with her husband to avoid the hardship of separation. Her claim that the standard of living is lower than in the United States, that she felt discriminated against because she is Chinese, that she does not speak Serbian fluently, and that she has no family there does not rise to the level of extreme hardship. [REDACTED] does not claim that she has any physical or mental health issues that would make her transition to living in Montenegro more difficult than would normally be expected. In addition, although [REDACTED] standard of living may decline and she may experience some economic hardship by moving to Montenegro, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also 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).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to 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.