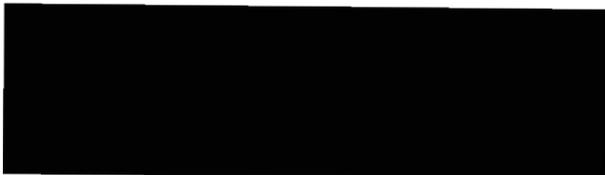


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services



H4

FILE:

Office:



Date: **AUG 24 2010**

IN RE:

ALINA SAUNDERS

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 PETITIONER:



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.



Chief, Administrative Appeals Office

of the State of California  
Department of Public Health  
San Francisco, California  
1917

*[Handwritten signature]*

**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 sustained.

The applicant is a native and citizen of Romania who was found to be inadmissible to the United States under 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 a period of one year or more. The applicant is married to a U.S. Citizen and is the daughter of a Lawful Permanent Resident and is the beneficiary of an approved Petition for Alien Relative filed by her spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to return to the United States and reside with her husband.

The officer in charge concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly. *See Decision of the Officer-in-Charge* dated February 14, 2008.

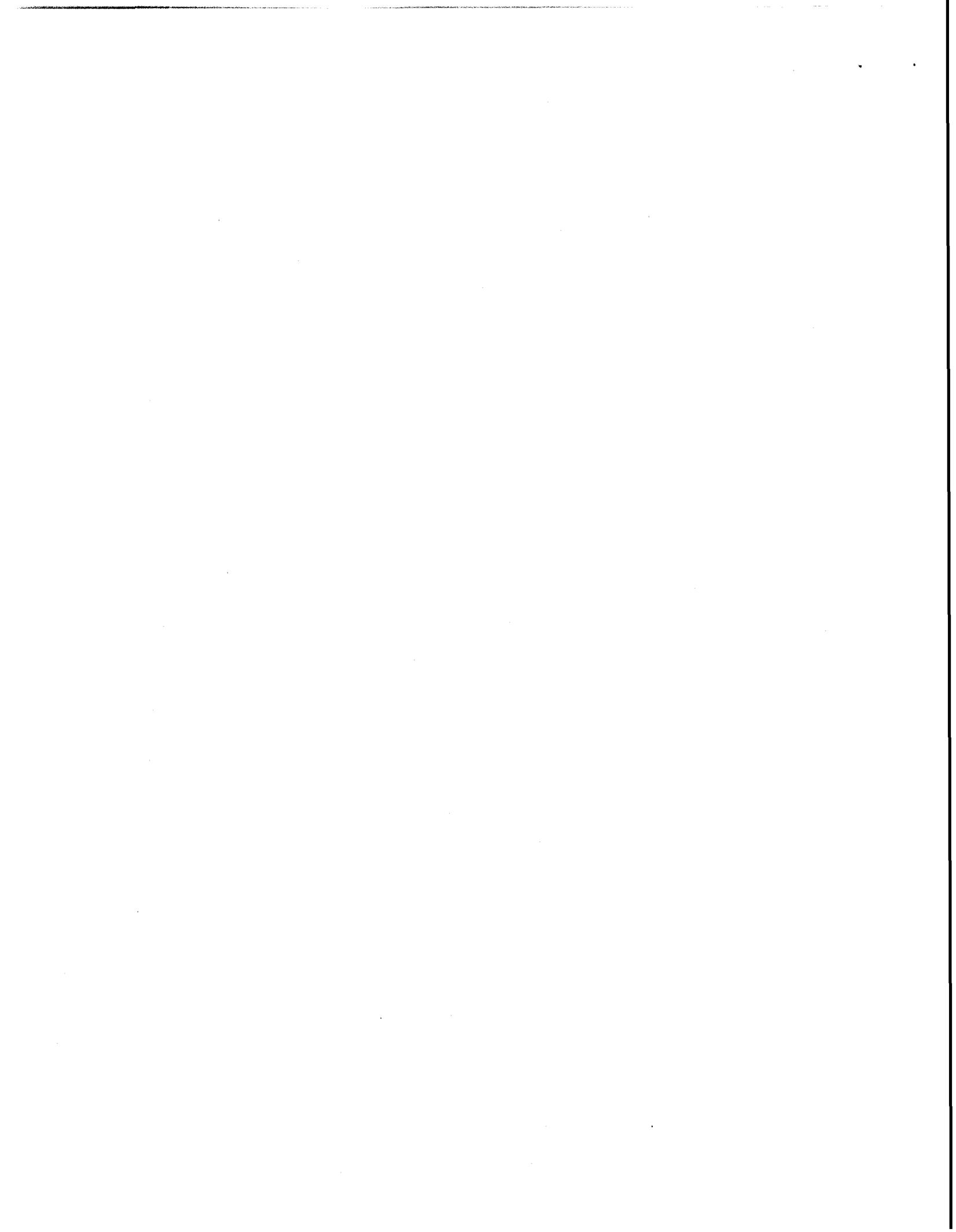
On appeal, counsel for the applicant asserts that the applicant's husband and mother are both suffering extreme hardship due to separation from the applicant. Specifically, counsel asserts that the applicant's husband suffers from learning disabilities that would prevent him from learning Romanian and finding employment if he relocated to Romania, and due to psychological trauma experienced in childhood he is unable to cope with being separated from the applicant. *See Notice of Appeal to the AAO (Form I-290B) and Brief in Support of Appeal* at 3-4. Counsel further claims that the applicant's mother is suffers from a serious, life-threatening condition and needs the applicant's support in order for treatment for the condition to be successful. *Brief* at 4-5. Counsel further states that the applicant's mother is suffering from depression due to separation from the applicant, which is interfering with her treatment, and adequate medical care for her condition would be unavailable in Romania. *Brief* at 4-5. In support of the appeal counsel submitted a learning disability assessment for the applicant's husband, a letter from the applicant's mother's doctor and medical records, a mental health assessment for the applicant's mother, medical records for the applicant's father, and documentation concerning the applicant's father's immigration status. The entire record was reviewed and considered in arriving at decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
- (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.

....

- (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.

Section 212(a)(9)(B)(v) 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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 566. The BIA has further stated:

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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the 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). 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).

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court held



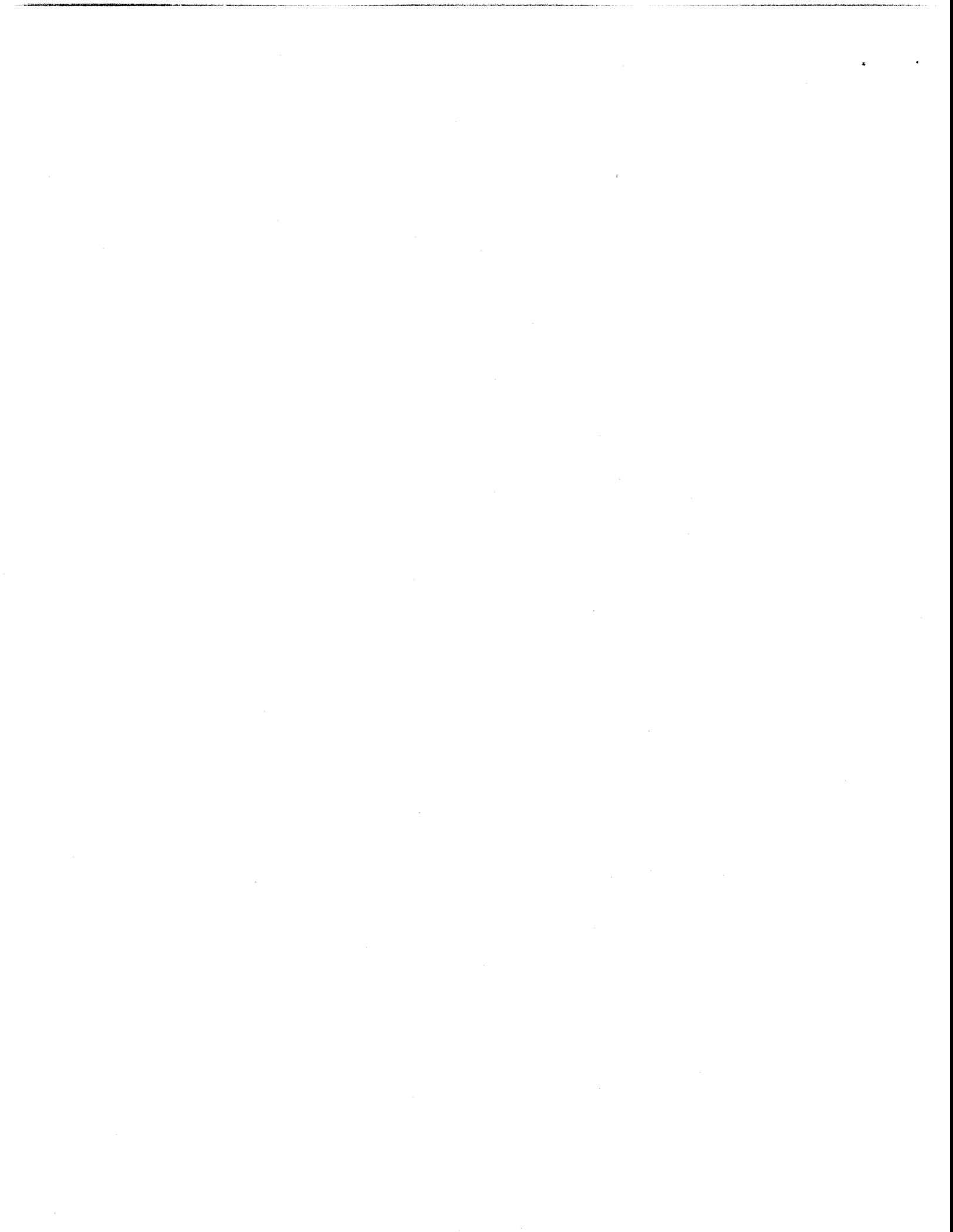
that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Hassan v. INS, supra*, the court further held that the uprooting of family and separation 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. Moreover, the U.S. Supreme Court (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a thirty-two year-old native and citizen of Romania who resided in the United States from May 21, 1993, when she was admitted with her father and brother as a visitor for pleasure, to January 31, 2006, when she was removed from the United States. An immigration judge ordered the applicant deported in 1996 after denying an asylum application filed by her father in which she was included as a dependent. An appeal to the BIA was dismissed and a petition for review was denied by the Ninth Circuit Court of Appeals on June 15, 1998. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States from June 15, 1998 to January 31, 2006. The applicant's husband is a thirty-five year-old native and citizen of the United States and her mother is a fifty-seven year-old native and citizen of Romania and Lawful Permanent Resident. The applicant currently resides in [REDACTED] and her husband and parents reside in Oregon.

Counsel for the applicant asserts that her mother is suffering extreme hardship since the applicant was removed from the United States because she suffers from Hepatitis C and is also depressed due to separation from the applicant. In support of this assertion counsel submitted a letter from her treating physician stating that a liver biopsy conducted in 2004 revealed that the applicant's mother had hepatic fibrosis and was also suffering greatly from depression at the time. [REDACTED] dated April 9, 2008. The letter explains that she did not continue with therapy for the condition because previous rounds of therapy had failed. [REDACTED]

If fibrosis has been demonstrated, patients are considered candidates for therapy as the risks of progression without treatment are real. . . . When considering treatment for hepatitis C, especially the context of retreatment, one needs to consider strongly the potential response of the patient to therapy. . . . What can be started is that almost every patient will suffer side effects, but how many and how severe can not be known until they try. Especially of concern to treatment is the issue of depression. This can be exacerbated so much on therapy that active suicidality emerges, and untreated or severe depression is a relatively strong contraindication to undergoing therapy. *Letter*

[REDACTED] further states that new medications are available that would make the applicant's mother a candidate for re-treatment, but she would need a social support system in place to help mitigate the severe side effects, and family members would be needed to help administer medications, assist with daily needs, and provide emotional support.



[REDACTED] personally states that he advises against the applicant's mother returning to Romania. [REDACTED] search regarding her particular type of hepatitis C, a fairly new disease for which effective treatments were not available until 2000, has been done in the United States. He states that there are recently developed options for therapy in the United States, even for cases like hers in which there has been resistance to therapy. He further states that if her disease progresses to the point where she needs a liver transplant, the odds of a successful transplant are far greater in the United States than in Romania. [REDACTED]

An updated mental health assessment for the applicant's mother conducted in March 2008 states that she continued to suffer from symptoms consistent with a Major Depressive Mood Disorder even after her husband was released from the custody of U.S. Immigration and Customs Enforcement (ICE) in 2008, and her medical condition and resulting financial hardship as well as worries over the applicant's living situation and her well-being have contributed greatly to her level of stress. See [REDACTED]. The assessment further states that her depressive disorder was precipitated by the detention and deportation of the applicant and recommends mental health counseling to help alleviate the emotional disorder, while noting the difficulty accessing this counseling due to her lack of health insurance.

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The letter from the physician treating the applicant's mother states that her medical condition is serious and that her depression could interfere with treatment and result in potentially life-threatening side effects. It further states that she would need considerable support from family members if she were to undergo recommended treatment. In light of her medical condition and the emotional hardship that has resulted from being separated from the applicant, the physical, emotional, and financial hardships the applicant's mother is suffering, when considered in the aggregate, would rise to the level of extreme hardship if the applicant were denied admission to the United States. The evidence on the record indicates that the applicant's mother has resided in the United States since 1990 and that she resides with her husband, who has become a Lawful Permanent Resident since the appeal was filed. The hardship resulting from her medical condition and the lack of adequate medical care in Romania combine with the difficulty of readjusting to conditions in Romania after residing in the United States for twenty years and severing her family ties to the United States would result in extreme hardship to the applicant's mother if she returned to Romania.

The AAO notes that documentation was also submitted concerning hardship to the applicant's husband if she is denied admission to the United States. Because the applicant has established extreme hardship to another qualifying relative, it is not necessary to make a separate determination of hardship to the applicant's spouse.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be



considered. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(a)(9)(B)(v) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives). *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant's immigration violation, remaining unlawfully in the United States from 1998 to 2006. The AAO notes that the applicant was only fifteen years old when her father brought her to the United States in 1993 and that she attempted to legalize her status after marrying her husband in 1997. The favorable factors in the present case are the hardship to the applicant's mother and to her husband and father; the applicant's lack of a criminal record or additional immigration violations; and her family ties in the United States, including her parents, husband, and brother.

The AAO finds that applicant's violation of the immigration laws cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

The AAO notes that the Officer-in-Charge denied the applicant's Application for Permission to Reapply for Admission to the United States after Deportation or Removal (Form I-212) in the same decision denying Form I-601. The Officer-in-Charge shall reopen the denial of the Application for Permission to Reapply for Admission to the United States after Deportation or Removal (Form I-212), review the application on its merits, and continue processing that application.

**ORDER:** The appeal is sustained. The Officer-in-Charge shall reopen Form I-212 and continue processing that application.

