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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[redacted]

DATE: JUL 0 6 2011 Office: PORTLAND, OR FILE: [redacted]

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and a citizen of Kosovo who failed to disclose a prior overstay when attempting to enter the United States in 2001 and misrepresented his intent when entering the United States as a non-immigrant visitor in 2004. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on March 30, 2009.

On appeal, the applicant asserts that he did not previously overstay his visa in the United States and that removing him would result in hardship to him and his spouse. *Form I-290B*, received April 29, 2009.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (i) In general. Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

United States Citizenship and Immigration Service (USCIS) records indicate that the applicant was admitted into the United States on March 19, 2001, with an authorized period of stay until June 18, 2001. USCIS records indicate he did not depart the United States until September 10, 2001. On November 26, 2001, the applicant attempted to re-enter the United States, but was denied. During questioning at this attempted entry the applicant denied that he had previously overstayed his visa, and claimed that he had a departure stamp in an expired passport which showed a timely departure. *Record of Sworn Statement*, November 26, 2001. The record indicates that the applicant was admitted to the United States B2 non-immigrant status on April 27, 2004. The applicant subsequently admitted under oath that, when he applied for admission as a B2 tourist on April 27, 2004, he intended to permanently reside in the United States, misrepresenting his intent upon entry. *Record of Sworn Statement*, December 10, 2008.

The applicant asserts on appeal that he did not overstay his prior visa, and that his previous passport contains a stamp which establishes this fact. *Form I-290B*, received April 29, 2009.

The AAO notes that the applicant has not provided copies of his previous passport which would establish that he had not overstayed on previous entries. 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 AAO finds that the applicant made material misrepresentations in attempting to conceal a prior overstay and in concealing his intent to reside permanently in the United States. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i).

The record contains, but is not limited to, the following evidence: statements from the applicant; statements from the applicant's spouse; statements from the applicant's employer; statements from the friends and family of the applicant; documents filed in relation to the applicant's Form I-485; documents filed in relation to the applicant's Form I-864; and copies of sworn statements given by the applicant at the time of entry into the United States and his adjustment interview.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(i) of the Act provides, in pertinent part:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (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 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*, 138 F.3d at 1293 (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.

The applicant has submitted a statement asserting that he does not want to return to Kosovo. He states that he wants to have children with his spouse in the United States, and that returning to Kosovo would prevent them from having the educational opportunities and quality of life available in the United States. *Statement of the Applicant*, undated. He further asserts that he would be unable to find employment sufficient to support himself and his family if he returned to Kosovo.

The applicant's spouse has submitted a statement asserting she would not be able to relocate with the applicant because she cares for her parents who have medical conditions. She also states that they would be unable to find jobs and that she would be discriminated against as a Slovenian by the Albanians in Kosovo. She states she also fears for the safety of any children she might have because the country has a high child abduction rate.

An examination of the record reveals no evidence to support these assertions. There are no country conditions materials indicating that the applicant would be unable to find employment. Although the record has been supplemented to show that the applicant and his spouse had a child on December 21, 2009, there is nothing in the record to show that there is a high child abduction rate or other safety risks to children in Kosovo which would rise to a level of creating an indirect hardship factor on the applicant's spouse. The record lacks any objective documentation that the applicant's spouse's parents have been diagnosed with significant medical condition, nor is there evidence that the applicant or his spouse provided for the applicant's spouse's parents financially. Without evidence to support these assertions the AAO cannot determine that the applicant's spouse would experience any uncommon impacts upon relocation. 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)).

Even when considered in the aggregate, the hardship impacts asserted on appeal are not sufficiently supported to establish that a qualifying relative would experience extreme hardship upon appeal.

The applicant has also asserted that he has solid employment in the United States, and that he would be unable to find sufficient employment to support his spouse if he were removed to Kosovo and his spouse remained in the United States. He states that he will soon receive health insurance and that he and his spouse wish to start a family.

The applicant's spouse has submitted a statement asserting that the applicant was the primary source of income and helped provide financial support for both herself and her parents. *Statement of the Applicant's Spouse*, undated. She states she would be miserable without her spouse if he were removed to Kosovo.

The record contains statements from friends and family members of the applicant which attest to his work ethic and the marital bonds with his spouse.

However, as with the assertions above, there is very little objective documentation to establish the assertions of the applicant and his spouse. The record does not contain evidence that the applicant would be unable to find employment abroad. And while there is a letter asserting he may soon qualify for health insurance through his employment, it has not been established that loss of health insurance would create a hardship for the applicant's spouse. As noted above, the record has been supplemented to show that the applicant and his spouse had a child on December 21, 2009. However, as discussed previously, children are not qualifying relatives in this proceeding; thus, any hardship to them is only indirectly relevant as to the impact it has on the qualifying relative. In this case, the record does not contain sufficient evidence to establish that the applicant's child will experience any uncommon hardship which would indirectly rise to the level of a hardship factor to the applicant's spouse. Further, there is no evidence that the applicant has provided financial support for the applicant's spouse's parents, or even that they have medical conditions as asserted by the applicant's spouse. 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 record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if his wife is refused admission. The AAO recognizes that the applicant's husband will suffer emotionally as a result of separation from his wife. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). 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. 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.