U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship and Immigration Services

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[redacted]

DATE: NOV 09 2011 Office: CHICAGO, IL FILE: [redacted]

IN RE: Applicant: [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:

[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 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 must 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, Chicago, Illinois. 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 of the former Yugoslavia and a citizen of Slovenia who 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), for obtaining an immigration benefit through fraud or the willful misrepresentation of a material fact. The record reflects that the applicant is the spouse of a United States citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated June 25, 2009.

On appeal, counsel asserts that the applicant did not obtain a benefit under the Act through willfully misrepresenting a material fact and, alternately, that the denial of the applicant's waiver request would result in extreme hardship to his spouse and child. *Form I-290B, Notice of Appeal or Motion; see also counsel's brief.*

The record includes, but is not limited to, statements from the applicant and his spouse; counsel's brief; a statement from the applicant's former brother-in-law; copies of a 2007 tax return and W-2 Wage and Tax Statements; bills, bank statements and other financial documentation; documentation relating to the applicant's spouse's credit union loan; and country conditions information on [redacted] The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) 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 Act is inadmissible.

The applicant indicated on a Form I-485, Application to Register Permanent Resident or Adjust Status, which he filed on June 13, 2008, that he last entered the United States on July 14, 2001 under the Visa Waiver Program. At his December 5, 2008 adjustment of status interview, the applicant made a sworn statement indicating that at the time of his July 14, 2001 nonimmigrant entry, he was intending to reside permanently in the United States. The record reflects that the applicant has remained in the United States since his July 2001 entry.

On appeal, counsel asserts that the applicant's statements at the time of his adjustment interview were poorly translated by his interpreter and that he did not willfully misrepresent a material fact to procure admission into the United States. Counsel, however, has submitted no evidence in support of his claim that would overcome the applicant's December 5, 2008 sworn statement, in which he indicated that at the

time he entered the United States in July 2001, he had no intention of returning to Slovenia. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 (BIA 1988); Matter *of Laureano,* 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). Accordingly, the AAO finds the record to establish that the applicant was an intending immigrant when he sought nonimmigrant admission to the United States on July 14, 2001 and that he is, therefore, barred from admission under section 212(a)(6)(C)(i) of the Act for having procured immigration benefit through fraud or the willful misrepresentation of a material fact.

Section 212(i) of the Act provides that:

> (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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 an applicant or other family members 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 United States Citizenship and Immigration Services (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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel asserts that relocating to Slovenia would result in extreme hardship to the applicant's spouse. Counsel asserts that the applicant's spouse was born in [redacted] and that she has not returned to the area since her departure in 1993. Counsel asserts that the applicant's spouse's significant ties are to the United States because her children reside in the United States and that she has no family in Slovenia. Counsel contends that the war in the former Yugoslavia had a severe impact on the applicant's spouse, that she lost her first husband to the war, and that she was admitted to the United States as a refugee. Counsel also contends that the applicant's spouse's experiences during the war, particularly the death of her first husband, have had a severe impact on her, that she suffered psychological trauma from the incident and that she cannot fathom going back to the region. Counsel indicates that Bosnia, where

the applicant's spouse was born and lived, is culturally different from Slovenia, that she is a Muslim while he is a Christian, that there are still tensions between Muslims and other groups in Slovenia, and that the applicant's spouse would not feel comfortable living there. Counsel asserts that the applicant's spouse does not speak Slovene and that she will have a difficult time finding employment and assimilating.

The AAO acknowledges the preceding claims on the impact of relocation on the applicant's spouse. While the record does not contain country conditions for Slovenia or medical documentation to support counsel's statements about the impact of relocation to Slovenia on the applicant's spouse's mental health, the record establishes that the applicant's spouse entered the United States as a refugee from the former Yugoslavia. As a result, we find that relocation to any part of what was the former Yugoslavia would be emotionally difficult for the applicant's spouse.

On appeal, counsel also asserts that the applicant's son, would experience hardship if he were to relocate to Slovenia with the applicant. Counsel states that has been residing in the United States since he was four years old. Counsel contends that is no longer fluent in the Slovenian language and that he is fully immersed in American culture. Counsel states that if relocates to Slovenia, he will not know anyone there and his educational growth will be stunted.

While the AAO acknowledges the applicant's claims regarding the impact of relocation on his son, we note that children are not qualifying relatives under section 212(i) of the Act. Any hardship to them must, therefore, be evaluated in terms of its impact on the applicant's spouse, the only qualifying relative in this case. The AAO also acknowledges that in *Matter of Kao and Lin*, the Board of Immigration Appeals (BIA) found that a 15-year old child who was not fluent in Chinese, had spent her formative years in the United States and was integrated into the American lifestyle would experience extreme hardship if she relocated to Taiwan with her parents. 23 I&N Dec. 45 (BIA 2001). While the applicant has a 15-year-old son who has lived his entire life in the United States, the record, as just noted, does not address and/or document these hardships. Moreover, unlike the child in *Kao and Lin*, the applicant's son is not a qualifying relative and the record fails to demonstrate how any hardships he might experience upon relocation would affect the applicant's spouse, the only qualifying relative.

Based on our review of the evidence of record, the AAO finds that the applicant's spouse's emotional difficulties upon relocation to Slovenia, her lack of family ties to Slovenia, the separation from her children in the United States and the usual difficulties generated by relocation, when considered in the aggregate, meet the extreme hardship standard. Thus, the applicant has established that his spouse would suffer extreme hardship if she relocated to Slovenia with him.

Counsel asserts that the applicant's spouse would experience emotional and financial hardship if she remains in the United States without the applicant. Counsel contends that after the traumatic experience of losing her first husband, the applicant's spouse will have difficulties dealing with the applicant's absence upon separation. Counsel asserts, that while it is hard to predict the extent of the impact that the applicant's departure would have on his spouse, the applicant's spouse "will be shattered to the very core" and that she may not recover from the heartache she will experience if the applicant is removed from the United States.

Regarding the financial hardship of separation, counsel claims that the applicant's spouse is financially dependent on the applicant, and that if the applicant is removed from the United States, she will also have to care for the applicant's now 15-year-old son. Counsel asserts that prior to marrying the applicant, the applicant's spouse lived in Iowa with her son and daughter and that although she worked, her ability to maintain her standard of living depended on her children's financial assistance. When the applicant's spouse first moved to Chicago, counsel indicates that she was not able to find employment and had to take out a loan. He reports that she was able to get a job only four months prior to the date of the brief and barely makes enough to survive. As a result, she needs the applicant's income. Counsel states that the applicant's spouse's children's situations have changed and that just because they were previously able to assist their mother financially does not mean that they can continue to do so. Counsel contends that it will be very difficult for the applicant's spouse to support two families and meet her and the applicant's financial obligations in the United States, as well as the additional cost of traveling to Slovenia to visit the applicant.

The AAO notes counsel's claims regarding the impact of separation on the applicant's spouse, but does not find the record to support them. The record does not contain documentation e.g., medical records or reports to establish the applicant's spouse's current mental health, the nature and severity of the emotional hardship that she will experience as a result of separation, or demonstrate how separation from the applicant would affect her ability to meet her daily responsibilities. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)).

As to the financial hardship of separation, the record contains an income tax return and W-2 Wage and Tax Statements for 2007, for the applicant's spouse, and copies of bills. While the AAO notes these documents, we do not find them to demonstrate that the applicant's spouse would experience financial hardship upon separation from the applicant. There is no evidence in the record to demonstrate that the applicant's spouse is financially dependent on the applicant. The record lacks proof of any loan that counsel claims was taken by the applicant's spouse to pay bills, proof of the applicant's income or his spouse's current income from her new job, or evidence from the applicant's adult children that they could not or would not again financially assist their mother.

Accordingly, upon a review of the record, the AAO finds that the claimed hardship factors, even when considered in the aggregate, fail to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and she continues to reside in the United States without the applicant.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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. 880, 886

(BIA 1994). 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. 627, 632-33 (BIA 1996). 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.

As the record does not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility, he has failed to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. 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 an application for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval 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.