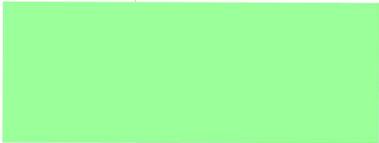




**U.S. Citizenship
and Immigration
Services**

(b)(6)

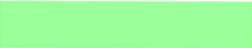


DATE: **FEB 25 2013**

OFFICE: VIENNA, AUSTRIA

File: 

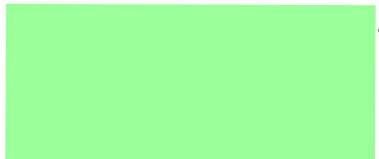
IN RE:

Applicant: 

APPLICATION:

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

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Vienna, Austria, denied the waiver application. The applicant, through counsel, appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. On December 4, 2012, counsel filed a motion to reopen the AAO's decision in accordance with 8 C.F.R. § 103.5. The motion will be granted. The previous decision of the AAO will be affirmed.

The record reflects that the applicant is a native of the Socialist Federal Republic of Yugoslavia and citizen of Montenegro 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 having sought to procure admission into the United States by willful misrepresentation. The applicant also was found to be inadmissible 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 one year or more and seeking admission within 10 years of his last departure from the United States. The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative, and denied his Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The AAO affirmed the Field Office Director's decision on appeal.

On motion, counsel contends new evidence establishes the applicant's wife and parents will continue to suffer extreme hardship if the U.S. Citizenship and Immigration Services (USCIS) does not grant the waiver application.

Section 212(a)(6)(C) of the Act provides, 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 Act is inadmissible.

...

(iii) Waiver Authorized.-For provision authorizing waiver of clause (i), see subsection (i).

The Field Office Director found the applicant inadmissible for having attempted to procure admission to the United States under the Visa Waiver program on April 26, 2000,¹ by presenting a photo-substituted Republic of Slovenia passport that did not belong to him. On motion, the applicant does not contest the finding of inadmissibility. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and he requires a waiver under section 212(i) of the Act.²

¹ On appeal, the AAO noted the Field Office Director erroneously indicated the applicant attempted to enter the United States on June 26, 2000, but found the incorrect date to be harmless error.

² On appeal, the AAO found the applicant to be further inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having accumulated unlawful presence from August 26, 2000, until August 12, 2004, when he was removed to Montenegro. On motion, the applicant does not

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

- (1) The Attorney General [Secretary of Homeland Security (Secretary)] may, in the discretion of the [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 [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.

Section 212(i) 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. Hardship to the applicant as well as his children and in-laws can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse and parents are the only demonstrated qualifying relatives in this case. 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).

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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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

contest the finding of inadmissibility. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, and he requires a waiver under section 212(a)(9)(B)(v) of the Act.

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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 v. I.N.S.*, 138 F.3d 1292, 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.

In support of the applicant’s motion, counsel contends the applicant’s parents continue to suffer from chronic medical and mental health conditions as: the applicant’s father’s treating physician has recommended he stop working because of his physical conditions, which are a severe threat to his well-being; his father requires many medications to treat his illnesses, and the medications have many side effects; his father is suffering from Chronic Adjustment Disorder with Anxiety, and his anxiety is exacerbated because he is stressed by the applicant’s mother’s continual distress and preoccupation with the applicant’s absence; and his mother is suffering from Post-Traumatic Stress Disorder (PTSD) since his removal from the United States in 2004. Counsel also contends the applicant’s spouse continues to suffer from mental health concerns as described in a neuropsychological assessment.

The applicant’s father further discusses that: his and the applicant’s mother’s medical conditions have worsened as they have grown older, which make it harder for them to do their jobs that require physical effort; he suffers from diabetes-related neuropathy in his arms and legs, which will worsen; he worries that his grandchildren will grow-up without their father, the applicant; the applicant would assist with medical appointments, bills, and daily activities; he cannot afford to stop working given his expenses; the applicant’s mother plans to stop working and will receive \$400/month in

social security; and the applicant's spouse will look for a job, but it will be difficult as she does not have a college degree and very little work experience.

Additionally, the applicant's spouse discusses: the reasons for her return to the United States; her physical, medical, and mental health conditions; her in-laws' monthly expenses; the reasons her in-laws are unable to sell their residential property; the reasons she does not expect to continue her education anytime soon; her children's reactions to the applicant's absence and her fears concerning the effect that the separation is having on him; the circumstances of her mother's death and its effect on her as well as her father and siblings; and the reasons her spouse's siblings are unable to assist in the support of their parents.

Although the applicant's parents and spouse may be experiencing hardship in the applicant's absence, the AAO finds the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The AAO notes the additional documents submitted to establish the applicant's father's current treatment for his physical and medical conditions are inconsistent. *See Medical Letter*, dated December 1, 2012; *see also Neuropsychological Assessment*, dated November 21, 2012. In the medical letter, the father's treating physician indicates the treatment for diabetes includes, in part, Glyburide and Onglyza and the treatment for hypertension is Lisinopril. Whereas, in the neuropsychological assessment, the treating mental health professional indicates the treatment for diabetes includes, in part, Glimepiride;³ and for hypertension, Hydrochlorat and Losartan. Moreover, the AAO notes the medical letter is internally inconsistent as it contains a facsimile date which appears to have been concealed by corrective liquid tape. The date indicates "February 5, 2008", about four years prior to the creation of the medical report. Based on these inconsistencies, the AAO gives little weight to the discussion of the applicant's father's current medical conditions contained in the medical letter. Additionally, the AAO notes the documents in support of the motion do not include evidence of the applicant's spouse's current medical conditions. 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 neuropsychological assessment indicates the applicant's mother "appears to satisfy the DSM-IV-TR criteria for [Post-Traumatic Stress Disorder (PTSD)]" and that she reports "clinically meaningful levels of trauma-specific dissociation", and the applicant's father satisfies the criteria for Chronic Adjustment Disorder with Anxiety. *Neuropsychological Assessment, supra*. However, the assessment does not discuss the specific course of treatment for the applicant's parents' mental health conditions, only general statements that stress relief is essential to their health and well-being as found in current literature and the applicant's return would help alleviate that stress. The AAO

³ The AAO notes that the neuropsychological assessment indicates the father's treatment for diabetes also includes Janumet and the medical letter indicates an additional treatment with Metformin. Publically accessible information online indicates Metformin is one of the medicines in Janumet. *See Medication Guide* at <http://www.fda.gov/downloads/Drugs/DrugSafety/UCM204268.pdf> [last accessed on January 22, 2013].

notes the two articles cited in the assessment as current literature are dated 1979 and 1988, about 24 years prior to the submission of the motion. Moreover, the AAO notes one article discusses the effects of stress on middle- and upper-level executives, but the assessment does not include a specific analysis demonstrating the applicant's parents' circumstances in relation to the test subjects in the article.

Further, the documentation submitted in support of the applicant's wife's current mental health indicates she has been diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood, and the pain from her herniated discs is of a severity that warrants clinical attention as it "causes clinically significant distress or impairment in social, occupational and other important areas of functioning." *Neuropsychological Assessment*, undated. The AAO notes the assessment does not discuss a specific course of treatment for her mental health conditions other than the general reference that the applicant's return would help. And, as stated previously, the record does not include evidence of her current physical condition other than what has been self-reported. The AAO is thus unable to conclude the record establishes the applicant's wife's emotional hardship would go beyond that which is commonly expected.

Additionally, the record includes evidence of the applicant's parents' mortgage statement and their employment status and earnings. However, the record does not contain sufficient evidence of the parental or spousal financial obligations or their inability to meet those obligations. The AAO is thus unable to conclude the record establishes that the financial hardship would go beyond that which is commonly expected.

The AAO notes the concerns regarding the hardship the applicant's parents and spouse have been experiencing in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's parents and spouse would suffer extreme hardship as a result of separation from the applicant.

In support of the applicant's motion, the applicant's spouse indicates she would continue to suffer extreme hardship upon relocation to Montenegro to be with the applicant as: she returned there in July 2011 with their children "to make a go of it", but had to return to the United States on account of the problems they and their family members have been experiencing; the applicant could only get temporary, seasonal employment; she has limited job skills, so the cost of childcare would consume any wages she would earn; some of their financial obligations are in arrears as their monthly expenses exceed their income, so they have to rely on family members for financial support; she does not speak Serbo-Croatian; and she wants her children to grow-up and go to school in the United States.⁴

On appeal, the AAO determined the applicant's spouse would suffer extreme hardship upon relocation to Montenegro due to her strong familial and community ties to the United States, her employment and financial circumstances when she previously resided in Montenegro, and the

⁴ On appeal, the AAO noted the record does not include any discussion concerning any hardship the applicant's parents would endure upon relocation to Montenegro. The AAO notes the motion also does not contain any discussion concerning any hardship upon the parents' relocation.

general social conditions there. The AAO also notes that although the applicant's spouse and children resided with the applicant from July 2011 until November 2012, the spouse's financial and social circumstances have not improved since the AAO's previous decision. The record reflects the cumulative effect of the hardship that the applicant's spouse would experience upon relocation due to the applicant's inadmissibility rises to the level of extreme.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to qualifying relative in the scenario of separation *and* the scenario of relocation. 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. In Re Pilch*, 21 I&N Dec. at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the applicant's spouse in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relatives, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to his U.S. citizen spouse and lawful permanent resident parents as required under section 212(i) of the Act.⁵ As the applicant has not established extreme hardship to qualifying family members, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the motion will be granted and the previous decision of the AAO will be affirmed.

ORDER: The motion is granted. The previous decision of the AAO is affirmed. The application remains denied.

⁵ As the applicant has failed to establish extreme hardship to his U.S. citizen spouse or lawful permanent resident parents as required under section 212(i) of the Act, he also has failed to establish extreme hardship to his qualifying relatives under section 212(a)(9)(B)(v) of the Act.