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U.S. Department of Homeland Security  
Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: ROME (VIENNA)

Date:

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IN RE:

APPLICATION:

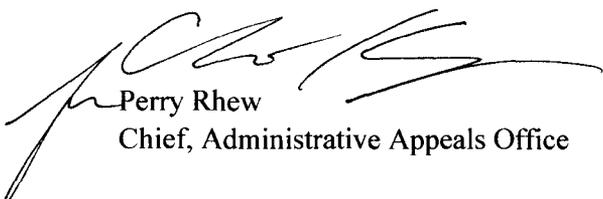
Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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).

  
Perry Rhew

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 applicant is a native and citizen of Romania who was found to be inadmissible to the United States pursuant to 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 for more than one year and seeking readmission within 10 years of his last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and child.

The officer-in-charge found that the applicant failed to establish extreme hardship to his U.S. citizen wife and denied the Form I-601 application for a waiver accordingly. *Decision of the Officer-in-Charge*, dated June 14, 2007.

On appeal, counsel for the applicant asserts that the applicant's wife and child will experience extreme hardship should the present waiver application be denied. *Brief from Counsel*, dated July 23, 2007.

The record contains a brief and statements from counsel; statements from the applicant, the applicant's wife, the applicant's mother- and father-in-law, the applicant's father, and a bishop from the applicant's church; a copy of the applicant's wife's naturalization certificate; a letter from a construction company offering the applicant employment in the United States; a copy of the applicant's passport; copies of police certificates for the applicant from Canada and Romania; a copy of the applicant's child's birth certificate and U.S. passport; documentation regarding the applicant's prior proceedings in Immigration Court, before the U.S. Board of Immigration Appeals (BIA), and the Sixth Circuit; documentation in connection with the applicant's request for asylum in the United States, and; documentation regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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-

....

(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 the Secretary of 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.

The record reflects that the applicant entered the United States without inspection on or about January 10, 2001. The applicant provided on Form G-325A, Biographic Information, that in January 2001 he began working in construction on a self-employed basis. *Form G-325A, Biographic Information*, dated September 7, 2003. He was detained by U.S. immigration officers on January 19, 2001 and issued a Notice to Appear, placing him into removal proceedings in Immigration Court. On September 7, 2001, the applicant conceded the allegations in the Notice to Appear and requested asylum, withholding of removal, or voluntary departure before an Immigration Judge. On February 12, 2002, the Immigration Judge denied the applicant's requests for relief and ordered him removed to Romania. The applicant appealed the decision to the BIA, yet on September 29, 2003 the BIA affirmed the Immigration Judge's decision without opinion. The applicant petitioned the Sixth Circuit Court of Appeals for review of the decision of the BIA, yet on December 7, 2004 the Sixth Circuit denied the applicant's petition for review. The applicant was removed from the United States on September 2, 2005. The applicant seeks admission as an immigrant pursuant to an approved alien relative petition filed by his U.S. citizen wife.

The applicant was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of his last departure. The officer-in-charge noted that the applicant worked in the United States without authorization or a social security card. *Decision of the Officer-in-Charge* at 1. As noted above, the applicant represented that he worked in construction in the United States at least from January 2001 until September 7, 2003. *Form G-325A, Biographic Information* at 1. The applicant has not established that he held employment authorization during that period. As the applicant worked without authorization during the pendency of his application for asylum before an Immigration Judge, he is not eligible for the exception to unlawful presence for applicants for asylum provided in section 212(a)(9)(B)(iii)(II) of the Act. Accordingly, the applicant accrued unlawful presence from the date of his entry in January 2001 until he was removed on September 2, 2005. This period totals over four years. Based on the foregoing, the applicant was properly deemed inadmissible under section 212(a)(9)(B)(i)(II) of the Act and he requires a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.<sup>1</sup>

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<sup>1</sup> The applicant is also inadmissible under section 212(a)(9)(A)(ii)(II) of the Act due to his prior removal to Romania, and he requires permission to reapply for admission into the United States. The applicant previously filed a Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, yet it was denied at the same time as the

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. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

On appeal, counsel asserts that the applicant's wife and child will experience extreme hardship should the present waiver application be denied. *Brief from Counsel* at 8-12. Counsel explains that the applicant's wife immigrated to the United States when she was two years old, and that her parents and siblings reside in the United States within 30 minutes from her home. *Id.* at 8. Counsel states that the applicant's wife has no immediate family residing in Romania except the applicant, and she has no emotional or religious ties to the country. *Id.* at 8-10. Counsel asserts that the applicant's wife has very little understanding of the language or current customs of Romania due to the fact that she departed when she was two years old. *Id.* at 8.

Counsel asserts that the applicant's wife would face hardship residing in Romania due to its remoteness from the United States. *Id.* Counsel indicates that the applicant's wife has never resided far from her family, and she relies on her parents for emotional, moral, social, and religious support, as well as for childcare. *Id.* at 8-9.

Counsel asserts that the applicant's three-year-old daughter will endure hardship should the applicant remain outside the United States. *Id.* at 9. Counsel states that the applicant's daughter would face difficulty in school should she attend where lessons are taught in Romanian. *Id.* Counsel provides that the applicant's daughter would face hardship if she remains in the United States and is separated from the applicant. *Id.* Counsel previously stated that the applicant's daughter would face difficulty

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applicant's Form I-601 application for a waiver without discussion of the merits of the Form I-212 application. The applicant's Forms I-601 and I-212 applications constitute separate matters, and the denials of those applications may not be appealed with a single Form I-290B appeal before the AAO. Thus, while the AAO herein addresses the merits of the applicant's Form I-601 application for a waiver on appeal, the merits of the applicant's Form I-212 application are not before the AAO in this proceeding and he continues to require an approved Form I-212 application.

returning to the United States at age 13 should she and the applicant's wife reside in Romania for the duration of the applicant's inadmissibility. *Prior Brief from Counsel in Support of Form I-601 Application*, at 7, undated.

Counsel indicated that the cost of travel and communication between the United States and Romania is high, thus the applicant's wife and her family members would be unable to frequently afford visits or contact. *Id.* at 8. Counsel stated that the applicant's wife and daughter would lose meaningful contact with their family should she reside in Romania. *Id.*

Counsel contends that economic conditions in Romania are poor and that wages are low. *Brief from Counsel* at 10. Counsel states that education, job opportunities, health care, and adequate housing are limited, particularly for those who are unemployed. *Id.* Counsel indicates that the applicant has only been able to obtain employment on a farm in Romania at a rate of \$30 per week, thus he must reside with his family due to a lack of sufficient resources to fund his own housing. *Id.* at 10-11. Counsel asserts that the applicant will be unable to support his wife and daughter, and that his wife will face a pay cut should she depart the United States due to her lack of knowledge of Romanian culture. *Id.* at 11.

Counsel stated that the applicant's wife would face hardship due to the high cost of relocating to Romania, including the expense of transporting furniture and belongings, purchasing new vehicles, and renting a new residence. *Prior Brief from Counsel in Support of Form I-601 Application* at 10. Counsel explained that the applicant's wife has been employed as an office assistant for a construction company for three years, and that she has significant responsibility and earns almost \$30,000 annually. *Id.* at 11. Counsel asserted that the applicant's wife would be unable to find comparable employment in Romania. *Id.*

Counsel stated that Romania experiences crimes, including attacks on civilians, especially women. *Id.* at 12.

Counsel asserts that the officer-in-charge did not discuss all elements of hardship presented by the applicant, and did not assess the elements cumulatively. *Brief from Counsel* at 4. Counsel states that the officer-in-charge cited cases that can be distinguished from the present matter, including *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) and *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965). Specifically, counsel asserts that the applicant has two qualifying relatives, in contrast to the applicants in the cited matters. *Id.* at 4-5.

The applicant's wife states that she and the applicant had their daughter on January 10, 2003. *Statement from the Applicant's Wife*, dated September 12, 2006. She provides that they subsequently had a son, but he died one day after birth due to a serious birth defect. *Id.* at 1. She explains that they have endured emotional strain as a result, but that they have "tried to go on with life and be happy together." *Id.*

The applicant's wife asserts that she is experiencing financial difficulty meeting her house payments and bills, which total approximately \$2,000 monthly. *Id.* She explains that she must work

frequently and her daughter receives care from her parents. *Id.* She laments that she has little time to enjoy moments with her daughter, and she feels depressed, lonely, and sad. *Id.* The applicant's wife indicates that she earns approximately \$1,000 per month cleaning residences, and that her income is not sufficient to meet her economic needs. *Subsequent Statement from the Applicant's Wife*, dated June 20, 2007. She indicates that she is unable to fund flights to Romania to visit the applicant. *Id.* at 1.

The applicant's wife states that she will suffer hardship should she relocate to Romania, as she and her daughter will live in poverty, and her daughter will lose the benefit of education in the United States. *Statement from the Applicant's Wife* at 1.

The applicant's wife provides that reuniting her family comports with her religious beliefs. *Subsequent Statement from the Applicant's Wife* at 1.

The applicant asserts that he is experiencing economic hardship in Romania, as he is only able to earn approximately \$30 per week. *Statement from the Applicant*, undated. He provides that he is unable to afford housing or a car, and he must reside with his parents. *Id.* at 1. He states that he will be unable to provide for his wife and daughter in Romania, thus he wishes to return to the United States. *Id.*

The applicant's mother- and father-in-law state that the applicant's wife has experienced a dramatic change since the applicant's departure, and that she is worried, tense, and stressed all of the time. *Statement from the Applicant's Mother- and Father-in-law*, dated September 15, 2006. They provide that they worry about the applicant's daughter, as she is unable to see the applicant's wife very often or the applicant at all. *Id.* at 1.

The applicant's father describes his own family history, and expresses that he empathizes with the applicant's wife's hardship and wishes for the applicant to be permitted to return to the United States. *Statement from the Applicant's Father*, undated.

Upon review, the applicant has not established that his wife will suffer extreme hardship if he is prohibited from entering the United States. The applicant has not shown that his wife will experience extreme hardship should she remain in the United States. The applicant's wife reports that she is enduring economic hardship due to the applicant's absence. However, the applicant has not provided any evidence of his wife's income or expenses. Specifically, there is no documentation in the record to support the applicant's wife's assertion that she faces \$2,000 in expenses each month. The applicant has not provided evidence of his wife's employment, and the record does not resolve whether she earns almost \$30,000 annually as claimed by counsel, or whether she earns the lower amount of \$1,000 per month that she reported. Without adequate documentation, the AAO is unable to conclude that the applicant's wife is facing unusual financial difficulty, or that she is unable to meet her needs in the applicant's absence. The AAO is further unable to conclude that the applicant's wife would be unable to afford visiting the applicant in Romania or communicating with him on a regular basis during his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant's wife expresses that she wishes for the applicant to return to the United States so they can be reunited as a family. The applicant's mother- and father-in-law observed that the applicant's wife is enduring emotional hardship due to separation from the applicant and her need to work and be away from her daughter. However, the applicant has not shown that his wife faces circumstances that are more difficult than those commonly expected when spouses live separately due to a prior violation of immigration law. It is evident that the applicant's wife experiences challenges due to acting as a single mother. Yet, the record shows that she receives childcare assistance from her parents. The AAO acknowledges that the separation of spouses often creates significant emotional hardship, yet the applicant has not distinguished his wife's suffering from that which is ordinarily anticipated when families reside apart due to inadmissibility.

Federal court and administrative decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). 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 (9<sup>th</sup> 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. *Hassan v. INS*, *supra*, held further 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.

The record contains references to hardships experienced by the applicant's daughter, and counsel asserts that the applicant's daughter is a qualifying relative. However, direct hardship to an applicant's child is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. Yet, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. As is possible in the present case, when a qualifying relative is left alone in the United States to care for an applicant's child, it is reasonable to expect that the child's emotional state due to separation from the applicant will create emotional hardship for the qualifying relative. Yet, such situations are common and anticipated results when an applicant must reside abroad due to a prior violation of U.S. immigration law. The AAO recognizes that the applicant's daughter faces emotional hardship due to being separated from the applicant. However, the applicant has not established that she is suffering consequences that can be distinguished from those ordinarily experienced. The applicant has not shown that his daughter's emotional hardship is elevating his wife's challenges to an extreme level.

As correctly noted by counsel, all elements of hardship to the applicant's wife must be considered in aggregate. However, considering the totality of stated challenges to the applicant's wife should she remain in the United States, the applicant has not shown by a preponderance of the evidence that she will experience extreme hardship.

The applicant has also not shown that his wife will suffer extreme hardship should she relocate to Romania to maintain family unity. Counsel indicates that conditions in Romania are poor, and he

cites various facts and statistics including the unemployment rate, low wages, and the prevalence of crime. However, the applicant has not cited or provided any reports or other evidence on conditions in Romania to support counsel's assertions. It is noted that, while the applicant stated that he is experiencing economic difficulty in Romania, he has not described any incidents of crime or instability in the country. Counsel has not established a basis for his knowledge of conditions in Romania, and his unsupported assertions do not constitute evidence of the conditions that may be faced by the applicant's wife should she join the applicant abroad.

The applicant has not submitted any documentation to support that he is enduring financial hardship in Romania, such as an account of his expenses or documentation of his wages. The AAO has examined the applicant's husband's examples of relatively expensive items in Romania, including gasoline, meat, and trousers. However, without an account of the applicant's regular needs and related expenses, the AAO is unable to conclude from several examples that he is facing unusual economic hardship. The record lacks sufficient evidence or explanation to establish that the applicant's wife will suffer serious economic difficulty should she relocate to Romania for the duration of the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Counsel explains that the applicant's wife would endure economic hardship due to the expense of relocating to Romania. Yet, as discussed above, the applicant has not provided evidence to show his wife's income or financial resources, thus the record does not establish that funding a transition to Romania would create an unusual burden for her. Counsel asserts that the applicant wife's family members would be unable to fund travel to and from Romania except in rare instances, yet the applicant's mother- and father-in-law have not made such an assertion, and the applicant has not provided any indication or evidence of his wife's family's economic situation or resources.

The AAO acknowledges that the applicant's wife would face emotional hardship due to departing the United States after a lengthy residence, and that she has strong ties to the country. It is evident that she would endure psychological challenges should she be separated from her parents with whom she shares a close relationship. However, the applicant has not sufficiently distinguished his wife's particular situation from that which is commonly faced when an individual relocates abroad due to the inadmissibility of a spouse.

The applicant's wife expresses that she wishes for their daughter to reside in the United States and enjoy the benefits of education in this country. Counsel posits that the applicant's daughter will encounter difficulty adapting to a school in Romania, and transitioning back to the United States around age 13. It is evident that the applicant's daughter will encounter challenges in changing her environment, adjusting to an unfamiliar country and school system, and repeating the significant adjustment if the applicant's family returns to the United States at the conclusion of his inadmissibility. However, the described challenges to the applicant's daughter are common results when a child relocates abroad due to the inadmissibility of her parent. The applicant has not shown that his daughter will have uncommon difficulty adapting, or that her hardship will elevate his wife's challenges to an extreme level.

Counsel states that the officer-in-charge cited cases that can be distinguished from the present matter, including *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) and *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965). However, the sole distinguishing factor noted by counsel is the erroneous assertion that the applicant has two qualifying relatives, his U.S. citizen wife and daughter. As noted above, the applicant's daughter is not a qualifying relative under section 212(a)(9)(B)(v) of the Act. The officer-in-charge cited *Matter of Shaughnessy* and *Matter of Mansour* for general propositions relating to an evaluation of extreme hardship, not as factual examples of specific cases that relate to the facts of the present matter. Counsel has not established that the officer-in-charge cited the matters in error, or that the applicant was prejudiced by an erroneous application of law.

All elements of hardship to the applicant's wife, should she relocate to Romania, have been considered in aggregate. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that his wife will experience extreme hardship should she join him in Romania.

Thus, the applicant has not established that denial of the present waiver application "would result in extreme hardship" to his wife, as required for a waiver under section 212(a)(9)(B)(v) 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 regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.