

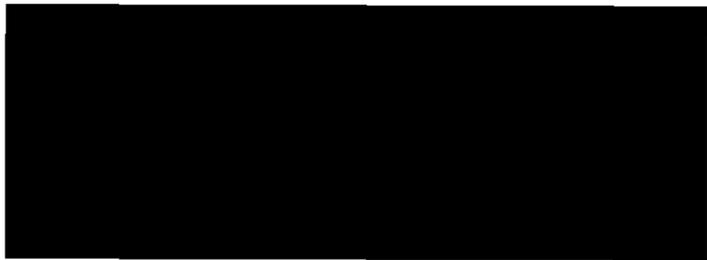
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



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



H6

DATE: **FEB 01 2012** OFFICE: VIENNA, AUSTRIA

File:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i) and 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 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 Officer-in-Charge, Vienna, Austria and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Kosovo (then Yugoslavia), and citizen of Croatia who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation, and 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 more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The Officer-in-Charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Officer-in-Charge*, dated August 4, 2009.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship of a familial, psychological, and economic nature if the waiver is not granted. *Form I-290B*, Notice of Appeal or Motion, received August 23, 2009.¹

The record contains but is not limited to: Forms I-601, I-212, and denials of each; hardship letters from applicant's spouse; various character reference letters and letters of concern; psychiatrist's letter; pregnancy-related records, child raising-related printouts; medical records for the applicant's father-in-law; Form I-485 and I-485 withdrawal; Form I-130; deportation records, detention records, records related to request to marry applicant in detention; country-conditions related printouts; birth and marriage records, family photographs, title insurance policy; income,

¹ The AAO notes that, in a separate decision, the Officer-in-Charge denied the applicant's Form I-212, Permission to Reapply for Admission into the United States After Deportation or Removal. See *Decision of the Officer-in-Charge*, dated August 4, 2009. The AAO notes that while Form "I-601" is the only form listed under "Application/Petition Form #" on page 2, part 2 of the Form I-290B, counsel asserts on page 2, part 3: "We respectfully request that the decisions on both the I-601 Application and the corresponding I-212 Application be reversed." A Form I-290B and filing fee must be filed for each individual application appealed. In situations where an applicant must file a Form I-212 and a Form I-601, the adjudicator's field manual clearly states that the Form I-601 is to be adjudicated first. Chapter 43.2(d) of the Adjudicator's Field Manual states, "If the alien has filed both applications (Forms I-212 and I-601), adjudicate the waiver application first. If the Form I-601 waiver is approved, then consider the Form I-212 on its merits; if the Form I-601 is denied (and the decision is final), deny the Form I-212 since its approval would serve no purpose." Thus, based on this rule, in a situation like the applicant's, where there is one appeal that has been filed and either the Form I-212 or the Form I-601 could be considered on appeal, the AAO will review the Form I-601.

employment, health insurance, and expense records. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant attempted to enter the United States on November 18, 2001 by presenting a photo-substituted Slovenian passport. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The applicant does not contest these findings on 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 was taken into custody and applied for asylum, which the Immigration Judge denied on March 24, 2003. The applicant filed an appeal which was dismissed by the Board of Immigration Appeals on February 20, 2004. The applicant remained in the U.S. until he was removed to Croatia on May 13, 2008. The applicant accrued unlawful presence from February 20, 2004 to May 13, 2008. As the applicant was unlawfully present in the United States for more than one year and seeks readmission within 10 years of his May 13, 2008 removal he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 USC § 1182(a)(9)(B)(i)(II). The applicant does not contest this finding on appeal.

Section 212(a)(9) of the Act provides:

(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 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 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. No court shall have

jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

A waiver of inadmissibility under sections 212(i) and 212(9)(B)(v) 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 can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. 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-Morales*, 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 record reflects that the applicant’s spouse is a 33-year-old native of Yugoslavia and citizen of the United States. Counsel asserts that the applicant’s spouse “has new or worsened hardship since the submission of her husband’s hardship waiver appeal,” in that she has become pregnant. *See Counsel’s Letter*, dated October 21, 2011. Counsel asserts that the applicant’s spouse “will have to go on unpaid maternity leave which will increase her financial hardship.” *Id.* Counsel asserts: “Also, her monthly expenses will drastically increase supporting a child on her own (e.g. \$401.17 a month for health insurance for her child).” *Id.* Counsel asserts that if the waiver is granted, the applicant’s spouse “would have an employed husband to help her pay their monthly expenses and assist her with the long term costs of raising a child.” *Id.* The record contains no documentary evidence that the applicant has ever been gainfully employed in the United States and no evidence has been submitted concerning his past or prospective employment or income. Addressing the period from November 2001 to March 26, 2008, the applicant asserts on *Form G-325A*, Biographic Information, dated March 26, 2008 (filed in conjunction with *Form I-485*, Application to Register Permanent Residence or Adjust Status), that he has worked only “odd jobs” as a “barber” since entering the U.S. in November 2001. Conversely, the applicant’s spouse has been steadily employed full-time by the Children’s Scholarship Fund since April 16, 2001, currently earning an annual salary of \$63,500. *See Employment Letter*, dated October 6, 2011. While it is asserted that the applicant and his spouse began living together in June 2006 [REDACTED] [REDACTED] dated February 29, 2008), title to the condominium is in the latter’s name alone (see *Title Insurance Policy*, dated June 9, 2006), and the record contains no evidence that the former contributed to the purchase of their home or the continued household expenses. The applicant’s spouse states: “I continue to have a mortgage payment, common charges, state and school taxes, car bill, credit card bills, utilities, and not to mention everyday expenses. ... I am the sole provider for myself and not having my husband here

to assume costs and take some of the pressure and financial burden off me, I do not know what I will be able to afford in the future after reviewing all of my expenses and that concerns me, especially for the welfare of our child.” See *Hardship Letter*, dated October 19, 2011. While the AAO acknowledges that the costs of raising a child will increase expenses for the applicant’s spouse, the evidence in the record is insufficient to establish that she would be unable to support herself and her child alone.

Counsel asserts that applicant’s spouse “has psychological hardship,” and references a *Psychiatrist’s Letter*, dated July 11, 2008. See *Form I-290B*, Notice of Appeal or Motion, received August 23, 2009. Therein [REDACTED] asserts that the applicant’s spouse “has been stressed” since her husband’s removal. See *Psychiatrist’s Letter*, dated July 11, 2008. [REDACTED] asserts that he evaluated the applicant’s spouse on June 30 and July 11, 2008. *Id.* [REDACTED] proffers a diagnosis of “Adjustment Disorder with Anxiety and depressed mood,” and asserts that “separation from her husband is traumatic to her and Uncertainty of her or their future has caused tremendous anxiety.” *Id.* [REDACTED] asserts that the applicant’s spouse needs no biological treatment at present, her symptoms of depression will continue to be monitored, and supportive psychotherapy is recommended. *Id.* No evidence of subsequent evaluation, psychotherapy, or related treatment since July 2008 has been submitted on appeal. While the AAO acknowledges [REDACTED] evaluation, the record does not establish that the applicant’s spouse’s emotional/psychiatric difficulties go beyond the normal hardships associated with removability or inadmissibility of a family member. The AAO notes that the evaluation is based on self-reporting by the applicant’s spouse and that while [REDACTED] asserts that she “lost motivation to work,” (*Id.*), an October 6, 2011 letter from [REDACTED] Senior Vice President and Chief Financial Officer, Children’s Scholarship Fund, describes the applicant’s spouse as having a “strong work ethic, dedication and many talents,” and states that she is the “New York Program Director and is responsible for supervising 7 employees and for the administration of more than 10,000 scholarship awards to children from low income families.” See *Employment Letter*, dated October 6, 2011. While the AAO recognizes emotional difficulties inherent in separation from a loved one, the record demonstrates that the applicant’s spouse is able to function at a high and responsible level despite emotional difficulties encountered.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant’s spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation to Croatia, counsel asserts hardship related to the close family ties of the applicant’s spouse, particularly to her father who “has a serious heart condition in which he needs her to assist him in taking his medication and attending doctor’s appointments.” See *Form I-290B*, Notice of Appeal or Motion, received August 23, 2009. A *Procedure Report*, dated October 13, 2011, shows that the applicant’s father had a “*Diagnostic Cath, Left Heart Cath 93452,” and that “Medical therapy” was recommended including a “follow up with [REDACTED] in 1-2 weeks.” *Id.* The applicant’s spouse’s mother states that though she has been right by her husband’s side, her daughter “has taken the responsibility of driving him to his

appointments, to which I am extremely grateful since I myself have not driven a car in over 20 years.” See *Letter From Applicant’s Spouse’s Mother*, dated October 17, 2011. She adds: “Without [REDACTED] help, I don’t know what we would do. My son and his wife have their own medical issues and they just had a baby girl this past July, making my husband and me first-time grandparents!” *Id.* While the AAO acknowledges that the applicant’s spouse has taken on responsibilities related to her father’s health, the evidence in the record does not demonstrate that he would be unable to find alternate means of transportation to and from medical appointments in her absence. The applicant’s spouse states: “I am very close to my family and do not even want to imagine being apart from them.” See *Hardship Letter*, dated October 19, 2011. The AAO recognizes the difficulties inherent in separation from loved ones, but the evidence is insufficient to establish that the applicant’s spouse would suffer hardship that goes beyond that normally experienced by family members of inadmissible aliens if she were she to relocate to Croatia to be with the applicant.

The applicant’s spouse states that she cannot live and raise a family in Croatia because the unemployment rate there continues to rise. See *Hardship Letter*, dated October 19, 2011. The applicant’s spouse refers to the *CIA World Factbook*, updated September 27, 2011, which lists unemployment in Croatia at 17.6% with an external debt of \$60.69 billion. *Id.* The AAO acknowledges that the applicant’s spouse has a record of stable employment in the U.S. and enjoys health insurance and other benefits related thereto. The AAO additionally recognizes that the applicant’s spouse would forfeit her current employment and related benefits were she to choose to relocate to Croatia to be with the applicant. The evidence in the record is insufficient, however, to establish that the applicant’s spouse would be unable to secure employment in Croatia or that she would be unable to secure routine or emergency medical care for herself or any children born to her.

The applicant has, therefore, failed to demonstrate the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member 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 section 212(a)(9)(B)(v) 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 appeal will be dismissed.

ORDER: The appeal is dismissed.