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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

[redacted]

#6

DATE: SEP 17 2012 OFFICE: VIENNA, AUSTRIA File: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(a)(9)(B)(v) and 212(a)(6)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 212(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 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 with the field office or service center that originally decided your case by filing a 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,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Bosnia who was found to inadmissible to the United States under 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 in the United States for more than one year and seeking readmission within 10 years of her departure from the United States. The applicant was additionally found to be inadmissible to the United States under section 212(a)(6)(C)(i) of 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 willful misrepresentation.[1] The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children.

The Field Office Director 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 Field Office Director,* dated August 19, 2010.

Counsel asserts on appeal that the applicant has submitted sufficient facts/evidence which, when considered in the aggregate, clearly establish that the applicant's spouse will face extreme hardship if the applicant is refused admission. *See Counsel's Memorandum in Support of Appeal,* received September 15, 2010.

The record contains, but is not limited to: Form I-290B and counsel's memorandum; various immigration applications and petitions; a hardship letter; a letter from the applicant signed by counsel; a psychologist's letter; a 2005 letter from a pediatric cardiologist; birth and marriage certificates; and documents related to the applicant's inadmissibility. The entire record was reviewed and considered in rendering this decision on appeal.

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

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[1] While the field office director does not specifically address the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act, the field office director's decision states: "Our records reveal that [redacted] entered the U.S. in March 2004, using a fraudulently obtained passport..." On the Form I-601 waiver application, at page 2, the applicant marked the box indicating: "I have sought to procure an immigration benefit by fraud or by concealing or misrepresenting a material fact (immigration fraud or misrepresentation)." Service records indicate that the applicant was refused an immigrant visa on April 8, 2010 for inadmissibility under both sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act, and interview notes indicate that she purchased a fraudulent Slovenian passport with which she gained entry into the United States in March 2004. Accordingly, the record supports a finding that the applicant is inadmissible not only under section 212(a)(9)(B)(i)(II) of the Act, but under section 212(a)(6)(C) of the Act as well.

(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.

The record reflects that the applicant entered the United States in March 2004 by presenting a Slovenian passport that was not her own. The applicant remained in the United States without authorization until she departed voluntarily in March 2010. The applicant accrued unlawful presence in the United States throughout this time, a period in excess of one year. As the applicant is seeking admission within 10 years of her departure, she 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). The record supports this finding, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(9)(B)(v) and 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and her children 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-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang,* 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession,

separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's spouse is a 33-year-old native of Bosnia and citizen of the United States who married the applicant in Bosnia in December 2002. They have two U.S. citizen sons together ages five and seven, both residing with the applicant in Bosnia since March 2010. The applicant's spouse states that separation from his wife and children has been very painful as they are currently living without any income or medical insurance. He contends that his wife and children "don't have a place to live," but also states that "they have been living with my in-laws." The applicant's spouse maintains that his wife's parents have no income and are living in very poor conditions, but he does not elaborate concerning the conditions to which he refers or provide corroborating evidence. He indicates that he cannot imagine living much longer without his family. The applicant's spouse writes that he has "been visiting many doctors lately because I have medical conditions which are getting worse every day. I think that the stress I am having right now is

causing all the medical problems." The applicant's spouse does not specify the medical conditions to which he refers and no corroborating documentary evidence has been submitted concerning multiple appointments with physicians or detailing the medical conditions at issue. 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)). A copy of a letter by [redacted] has been submitted on appeal. Therein [redacted] states that he has never met or evaluated the applicant's spouse or any member of his family but has reviewed [redacted] 2005 letter, the field office director's decision denying the applicant's waiver, and the applicant's spouse's hardship declaration. On that basis [redacted] offers his opinion that "this situation causes undue stress to [redacted] in particular." [redacted] does not diagnose the applicant's spouse or refer him for treatment but contends that "it is not unreasonable to assume that, should his wife's visa be denied and the family is unable to live together, that he could deteriorate with regard to psychological health."

The applicant's spouse asserts that his elder son, [redacted] was born with a heart condition which requires constant medical care and that while in the United States he needed monthly checkups. [redacted] confirms in a letter dated September 13, 2005 that [redacted] was diagnosed as an infant with "a small hemodynamically insignificant ventricular septal defect." [redacted] states, however, that [redacted] has no other ongoing medical issues, is on no medications, is growing well with no abnormal cardiovascular signs or symptoms, will need antibiotics until the VSD closes but does not need any other special care or precautions. There is no indication in [redacted] letter that [redacted] requires constant medical care or monthly checkups, but rather the doctor writes that he plans to re-evaluate the boy when he is about six months old. Results of that evaluation have not been submitted for the record. The record contains no medical documentation for [redacted] other than [redacted] letter of nearly seven years ago. No documentary evidence has been submitted to substantiate any ongoing treatment or to demonstrate [redacted] current medical condition or need for treatment. The applicant's spouse expresses concern that his son's condition might worsen because he cannot afford to visit a doctor in Bosnia where medical care is not provided for free. He adds that his sons' education "is in question" but attending school "is not a solution" because they are no longer living with him. No documentary evidence addressing healthcare, education or any other country conditions in Bosnia has been submitted.

In a letter signed by counsel but written at least in part in what appears to be the voice of the applicant, it is asserted that separation would result in extreme hardship of an emotional and economic nature to the applicant's spouse and children. The letter maintains that if the applicant's spouse were to bring the boys back to the United States, he would have to hire a live-in caretaker for them while he works away from home as a truck driver. It is contended, without corroborating evidence, that this would be extremely expensive and would reduce his ability to properly provide for their sons. The letter refers to as an "unthinkable alternative," the children remaining in Sarajevo with the applicant and thus being effectively barred from their own country.

The AAO acknowledges that separation from the applicant and from his young children has and may continue to cause various difficulties for the applicant's U.S. citizen spouse. However, the record lacks sufficient evidence such as documentation of any medical/health-related conditions

suffered by the applicant's spouse, documentation of the applicant's son's current medical condition and any related needs, documentation of the applicant's spouse's financial circumstances, information regarding the availability of other family members who might assist him with child care, or documentation addressing country conditions in Bosnia. Thus, the evidence in the record is insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

The applicant's spouse does not address the possibility of relocating to Bosnia. The applicant, in a letter signed by counsel, contends that in Bosnia the family would simply have to hope that Sejad does not experience any adverse medical situations and that it "goes without saying" that he would have access to much better treatment in the United States. As previously noted, the record contains no documentary evidence addressing country conditions of any kind in Bosnia nor does it contain medical documentation more recent than September 2005 that could demonstrate [redacted] current health condition or his needs for any ongoing medical care.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse which includes concern that the quality of medical care available to his eldest son would be below the standard of that available in the United States. The AAO finds that considered in the aggregate, the evidence as currently constituted in the record is insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Bosnia to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges her 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 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 appeal will be dismissed.

ORDER: The appeal is dismissed.