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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 0 8 2013

OFFICE: VIENNA, AUSTRIA

File:

IN RE:

Applicant:

APPLICATION:

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

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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form I-601 waiver application and the Form I-212 application for permission to reapply for admission were concurrently denied by the field office director, Vienna, Austria and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Croatia who was found to be inadmissible to the United States 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 more than one year and seeking admission within 10 years of her last departure, and section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien ordered removed under section 240 or any other provision of law. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), and permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with her U.S. citizen spouse and son.

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 February 7, 2012. The field office director concurrently denied the Application for Permission to Reapply for Admission (Form I-212), noting that as the Form I-601 had been denied granting the Form I-212 would serve no purpose. *Id.*

On appeal counsel asserts that the applicant's spouse is suffering extreme hardship due to separation from the applicant, is unable to afford the cost of travel to Croatia while maintaining his job and residence in a weakened economy, and is unable to relocate because he cannot speak, read or write the Croatian language making him unemployable and unable to support the applicant and her son there. *See Form I-290B, Notice of Appeal or Motion*, received March 12, 2012.

The record contains, but is not limited to: Form I-290B and counsel's appeal brief; various immigration applications and petitions; a hardship statement from the applicant's spouse; a personal statement from the applicant; letters from the applicant's son; letter's from a family therapist concerning the applicant's son; birth, marriage, divorce and custody-related documents; and documents related to the applicant's removal proceedings and voluntary departure/removal, appeals, motions, and denials before the Immigration Court, the Board of Immigration Appeals (BIA), and the Ninth Circuit Court of Appeals. The entire record was reviewed and considered in rendering this decision on the 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.

The record shows that the applicant entered the United States on March 4, 1994 as a B-2 visitor authorized to remain until September 1, 1994. The applicant overstayed her visa and was placed into removal proceedings on October 9, 2001 when her asylum application was denied. On May 28, 2002 an immigration judge granted the applicant voluntary departure in lieu of removal until June 27, 2002. The applicant appealed on June 25, 2002 to the BIA which affirmed the decision of the immigration judge and granted voluntary departure within 30 days. On December 3, 2003 the applicant appealed to the Ninth Circuit Court of Appeals which denied her petition to review on September 1, 2006. On October 16, 2006 a stay of removal was granted until February 27, 2007 which was followed by several additional extensions and requests for deferred action. The applicant was taken into immigration custody on January 26, 2009 and released the same day under an order of supervision. She reported as directed, and after exhausting all of her appeals and motions was removed from the United States under a final order of removal on September 23, 2010. Based on the foregoing, the applicant was found to be inadmissible to the United States 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 more than one year and seeking readmission within 10 years of her removal. She requires a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her U.S. citizen spouse and son. The applicant was found to be additionally inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien ordered removed under section 240 or any other provision of law. She requires permission to reapply for admission into the United States within 10 years of her removal under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii). The record supports the inadmissibility findings, the applicant does not contest inadmissibility, and the AAO concurs that the applicant is inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(9)(A)(ii) of the Act.

A waiver of inadmissibility under section 212(a)(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 and her child 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 record reflects that the applicant's spouse is a 49-year-old native and citizen of the United States who has been married to the applicant since October 2007. While they have no children together, the applicant has an 18-year-old son, from a prior marriage who has resided with her in Croatia since September 2010. In an undated personal statement, the applicant's spouse states that the applicant is a top person, hardworking, caring, very loyal, understands his simple and old fashioned ways, makes him happy, makes it easy for him to love her which he does, and he is honored to have her as his wife. He writes that is his stepson whom he cares for like a son but as they are still new to each other and getting to know each other, and he could not easily carry the responsibility of raising him on his own without the applicant. The applicant's spouse does not describe any hardship that separation from the applicant has or will cause him. The applicant likewise makes no assertions of extreme hardship to her spouse in her own undated personal statement. In the Form I-601/I-212 denial letter, the field office director clearly explains that no documentary evidence has been submitted to establish extreme hardship to the applicant's spouse and notes that 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)). Despite the field office director providing a list of factors often effective in demonstrating extreme hardship, no new documentary evidence has been submitted on appeal to address this deficiency. While counsel asserts on the Form I-290B that the applicant's spouse is "unable to afford the cost of travel to Croatia to see his wife and stepson while maintaining his job and residence in this weakened economy," no corroborating financial documents or documentary evidence of any kind has been submitted for the record.

The AAO acknowledges that separation from the applicant likely has and will continue to cause various difficulties for her U.S. citizen spouse. However, it finds the assertions and evidence in the record 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 Croatia to be with the applicant and her son. Neither does the applicant address the possibility of her spouse relocating to Croatia. Counsel asserts on appeal that the applicant's spouse cannot relocate to Croatia because he cannot speak, read or write the Croatian language and "as such, he is not employable in Croatia and cannot support his wife and stepson from there." Counsel submits no corroborating country-conditions reports or documentary evidence of any kind demonstrating that the applicant's spouse would be unemployable in Croatia and/or otherwise unable to support his family upon relocation. No other assertions of relocation-related hardship to the applicant's spouse have been

made. Counsel contends in his appeal brief that it "has been an extreme hardship to the family for to procure an immigrant visa through consular processing abroad." The nature of said hardship is neither defined nor explained by counsel.

Assertions have been made concerning hardship to the applicant's 18-year-old son, As discussed above, hardship to the applicant's child can be considered only insofar as it results in hardship to the applicant's qualifying relative – here stepfather, the applicant's spouse. Before departing to Croatia, the applicant wrote that was born and raised in the United States, does not speak Croatian or know anything about life in Croatia where he will be unable to interact with anyone and is 'tainted' by his ethnic Serbian background, and it would be "much worse for him because he is American." The applicant does not specify or describe her concerns for with regard to his Serbian or American background and submits no new or updated statements on appeal. Counsel asserts in his appeal brief that is currently unable to communicate in Croatian, "thereby becoming a prime target for discrimination and abuse in Croatia." Counsel provides no examples of such discrimination and abuse and submits no corroborating documentary evidence. Counsel further contends, without explanation or corroboration, that has tried to finish high school via distance correspondence and his "prospects of adjusting to life abroad are extremely poor." The record shows that received family counseling for several years in the United States from M.F.T., who wrote most recently in March 2010 that she was treating him for severe anxiety and depressed mood, that he attended bi-monthly therapy sessions, had made significant progress in the prior few months, remained closely bonded with the applicant, is now able to sleep through the night without medication, and his anxiety is more manageable with relaxation exercises and talk therapy. The applicant's spouse does not address any hardship he has or will suffer as a result of his stepson's difficulties in Croatia. While may be experiencing challenges of various degrees in Croatia, the evidence in the record is insufficient to establish that any such challenges to the applicant's son have resulted in extreme hardship to his stepfather, the applicant's spouse.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including that he is unemployable because he does not speak, read or write the Croatian language and would thus be unable to support himself, the applicant and his stepson. Considered in the aggregate, the AAO finds that the evidence in the record as currently constituted is insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were he to relocate to Croatia to be with the applicant during the remainder of her temporary period of inadmissibility.

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 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.

The AAO notes that the field office director denied the applicant's Form I-212, application for permission to reapply for admission into the United States after removal in the same decision denying the applicant's form I-601 waiver application. The AAO has dismissed the appeal of the form I-601 application. *Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant remains inadmissible under section 212(a)(9)(B)(i)(II) of the Act, no purpose would be served in approving the applicant's Form I-212.

ORDER: The appeal is dismissed.