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



U.S. Citizenship  
and Immigration  
Services

DATE: JAN 03 2013

Office: VIENNA, AUSTRIA

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A).

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 request 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

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting 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 and Herzegovina 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 in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States, and section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for seeking admission within 10 years of the date of her removal. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and permission to reapply for admission.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to her U.S. citizen spouse and denied the application accordingly. *See Decision of Field Office Director*, dated September 26, 2011.

On appeal, counsel for the applicant asserts that in denying the applicant's waiver application, the Director failed to consider favorable factors in her case. Counsel states that those factors include the applicant's family ties to the United States, hardship to her U.S. citizen children who are living with her in Bosnia, hardship to her qualifying spouse, her long period of residence in the United States, her remorse for failing to depart voluntarily when ordered to do so, and her lack of a criminal record. Counsel also indicates that the Director failed to consider in the aggregate the qualifying spouse's depression and his distress over witnessing emotional harm to his children due to their separation from him. Counsel asserts that it is difficult for the qualifying spouse to visit the applicant in Bosnia and that he worries about the applicant's safety there. Additionally, counsel states that the qualifying spouse has no other ties to Bosnia and would be unable to find employment there. *Counsel's Brief*.

The record includes, but is not limited to, statements from the qualifying spouse, a letter from the qualifying spouse's friend, and a mental health assessment. 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-

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(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.

In the present case, the record reflects that the applicant entered the United States on December 9, 2000 on a B-2 nonimmigrant visa with authorization to remain until June 8, 2001. On May 15, 2001, she filed an application for asylum. After being referred to the immigration court, she withdrew her asylum application and received an order of voluntary departure with instructions to depart by September 30, 2004. The applicant did not depart by that date and was later removed to Bosnia on May 30, 2007. Therefore, the applicant accrued more than one year of unlawful presence and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from her departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act as the spouse of a U.S. citizen. In order to qualify for this waiver, however, she must first prove that the refusal of her admission to the United States would result in extreme hardship to her qualifying relative. Hardship to the applicant or her U.S. citizen children is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's spouse. 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 of Immigration Appeals (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 U.S. 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

On appeal, the qualifying spouse states that separation from his wife and his two U.S. citizen children has been very difficult for him. He misses his family and is anxious to be reunited with them. He is also concerned that his children are struggling emotionally due to their separation

from him. He feels that his children would have a better quality of life and a better education in the United States. The qualifying spouse asserts that he would not be able to provide for his family if he were to relocate to Bosnia and that they would not have health insurance there. A friend confirms that the qualifying spouse misses his family. *See Letter from* [REDACTED] dated June 2001. A mental health assessment also indicates that the qualifying spouse has felt sad and lonely and that he sometimes has trouble concentrating and sleeping. *See Report by Annita List, LMSW, ACSW, dated April 25, 2011.* The assessment also states that the applicant has experienced extreme emotional and economic hardship. *Id.*

The AAO finds that the applicant has failed to demonstrate that her qualifying spouse would suffer extreme hardship if her waiver application were denied. Although the qualifying spouse misses his wife and children and feels that they would have a better quality of life in the United States, the evidence does not establish that his separation from them has caused him extreme hardship. The mental health assessment does not indicate that the qualifying spouse's sadness relating to his family's absence has affected his ability to work, maintain relationships, or complete his daily tasks. Emotional difficulties regarding separation are a common result of the removal or inadmissibility of a close family member and the evidence in the present case does not establish that they reach the level of extreme hardship necessary for a waiver. *See Matter of Cervantes-Gonzalez, 22 I&N Dec. at 568; Matter of Pilch, 21 I&N Dec. 627, 632-33 (BIA 1996).*

Despite claims in counsel's brief and the mental health assessment that the qualifying spouse has suffered extreme economic hardship, there is no documentary evidence in the record to support that claim. While the qualifying spouse states that his visits to Bosnia are expensive and that he supports his family financially, there is no evidence that he cannot afford to do so. Additionally, although the qualifying spouse feels that his children would benefit from a higher standard of living and quality of education in the United States, inferior economic and educational opportunities do not constitute extreme hardship. *See generally Matter of Cervantes-Gonzalez, 22 I&N Dec. at 568.*

The AAO also notes that the applicant's children are not qualifying relatives for purposes of a waiver under section 212(a)(9)(B)(v) of the Act. There is no evidence that inferior opportunities for the children or emotional difficulties relating to the separation of their family are causing extreme hardship for the qualifying spouse.

Finally, the evidence does not establish that the qualifying spouse would suffer extreme hardship if he were to relocate to Bosnia. Although the qualifying spouse states that he would be unable to support his family there, the record does not contain any documentation to support that claim. Although the qualifying spouse may be unable to continue working as a truck driver in Bosnia, the inability to pursue a particular profession does not constitute extreme hardship. *See Matter of Cervantes-Gonzalez, 22 I&N Dec. at 568.* Additionally, while the mental health assessment notes that the qualifying spouse feels that returning to Bosnia is "not an option," the reasons for that determination are not clear. Although the qualifying spouse may prefer to live in the United States, where he has become a naturalized citizen and where his children were born, such a preference does not create extreme hardship. While he has been living in the United States since 1999 and has stable employment here, he lacks family ties here. Although the qualifying spouse

states that he came to the United States as a refugee, he has returned to Bosnia on a regular basis to visit his family. There is no evidence in the record to indicate that the qualifying spouse would be in danger if he relocated to that country. Even when considered in the aggregate, the qualifying spouse's concerns regarding relocation to Bosnia do not rise to the level of extreme hardship. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

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.

The AAO notes that the Director also denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in the same decision denying the Form I-601. *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 is inadmissible under section 212(a)(9)(B)(i)(II) of the Act and was found not to qualify for a waiver of this inadmissibility, no purpose would be served in granting the applicant's Form I-212.

In proceedings for an 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.