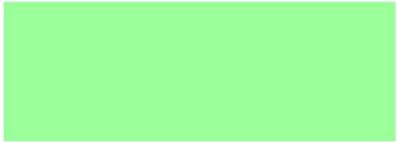




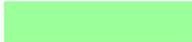
U.S. Citizenship  
and Immigration  
Services

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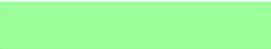


Date: **MAR 09 2013**

Office: VIENNA

FILE: 

IN RE:

Applicant: 

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:**

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 in accordance with the instructions on 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,

  
fs-

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

The applicant is a native of Yugoslavia and citizen of Kosovo 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 again seeking admission within ten years of his last departure from the United States. The applicant entered the United States in 2003 with a K-1 visa, remaining until 2009, beyond his period of authorized stay, without adjusting his status. The applicant is the spouse of a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated May 22, 2012.

On appeal counsel for the applicant contends the denial of the applicant's waiver request erroneously imposed an unreasonable high standard and did not consider the totality of the circumstances or the record in its entirety. With the appeal counsel submits a brief. The record includes a psychological evaluation of the applicant and spouse; applicant's previous employment information; and country information for Kosovo. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) 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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

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. The applicant's wife is the only qualifying relative in this case. 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. *Salcido-Salcido v. INS*, 138 F.3d 1292 (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 counsel asserts the Service did not consider the applicant's circumstances in the aggregate but rather considered only that applicant's spouse wanted the applicant to return to the United States and failed to consider the psychological evaluation. Counsel asserts that physical, psychological and emotional hardships were established and that the denial of the waiver failed to consider this evidence. Counsel contends the applicant's spouse and two U.S. citizen children had been dependent on the applicant prior to his return to Kosovo and that he had been a source of emotional support and comfort to his spouse who had suffered before she and the applicant met. Counsel asserts that the spouse suffered in Kosovo in an abusive relationship with her first husband and the war in 1999, so she needs the applicant for physical, emotional, and mental support. Counsel states that the applicant had been the primary provider for the household but will be unable to support the family from Kosovo. Counsel asserts that the spouse is unable to visit the applicant in Kosovo because of her previous suffering there in a prior marriage and because of travel costs as she is a full-time homemaker. Counsel contends she would be unable to afford to move or to find employment in Kosovo. Counsel contends the applicant's children would suffer if they are unable to be raised in United States.

The psychological evaluation describes the previous abusive relationships reported by the applicant and his spouse, and that the spouse's previous marriage had resulted in an abusive husband taking her daughter. During war in Kosovo the spouse's family were forced from their home and relocated to a refugee camp. The evaluation states that the applicant reported his family had been torn apart by his father and that when he initially came to the United States his fiancée immediately changed and did not want to be married to him. The evaluation states the applicant and his spouse bonded as they understood each other's experiences. The evaluation concludes that if the applicant is not here his spouse's depression will become severe and the result could reactivate trauma-related depression and anxiety caused by domestic violence and the loss of her daughter from her first relationship. The evaluation states that the spouses' marriage to the applicant has helped her heal and that without the applicant her life would be at risk as she could not survive his loss, go to work, and raise children alone.

The AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. The psychological evaluation stems from two sessions within a narrow time period in 2009 rather than from an established relationship with a mental health professional, occurred prior to the applicant's return to Kosovo, and is based largely on information provided by the applicant and spouse with no subsequent sessions or determinations. Although the evaluation states the applicant has helped his spouse heal from previous difficulties, the record contains no statement from the applicant's spouse regarding any emotional hardships she is experiencing and does not support how any emotional hardships she experiences due to separation from the applicant are outside the ordinary consequences of removal or inadmissibility.

Counsel states the applicant's spouse does not work, but no documentation has been submitted establishing the spouse's current expenses, assets, and liabilities or her overall financial situation to establish that without the applicant's physical presence in the United States she experiences financial hardship. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse faces as a result of her separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

The record also does not support that the applicant's spouse would experience extreme hardship if she were to relocate abroad to reside with the applicant. Counsel contends the applicant's spouse experienced trauma in Kosovo through a prior marriage and war. The record does not establish, however, that the spouse's experiences were so severe that as a native of Kosovo and given the passage of time she would be unable to adjust to living there or that her ties to the United States are now such that residing abroad would create extreme hardship. The record shows that the applicant's spouse has visited Kosovo since immigrating to the United States and has relatives remaining there. Counsel submitted general country information related to human rights in 2008 and counsel asserts that Kosovo has crime and economic problems. This describes generalized country conditions, but as the record does not indicate how they specifically affect the applicant's spouse and fails to address where the applicant lives, his living conditions, or the types of employment he and his spouse would seek, it therefore fails to establish that safety and economic concerns rise to the level of extreme hardship for his spouse.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) / 212(a)(9)(B)(v) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under

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section 212(a)(9)(B)(v)) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse. In this case the applicant's children are young and there is no evidence of health or other issues to preclude them from relocating with the applicant's spouse were she to relocate abroad to reside with the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, 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.