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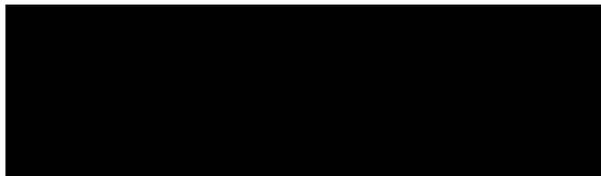
U.S. Department of Homeland Security
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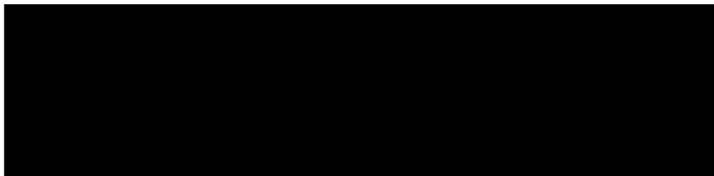


FILE: [REDACTED] Office: CHICAGO, ILLINOIS Date: JAN 26 2007

IN RE: [REDACTED]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois. The matter is 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 Albania who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States using a passport under his brother's name. The record indicates that the applicant is the husband of a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his United States citizen wife and child.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's wife and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated June 1, 2005.

On appeal, the applicant, through counsel, claims the District Director misapplied the law regarding extreme hardship. Counsel asserts that the denial of the applicant's admission into the United States would result in extreme hardship to his United States citizen wife. *Form I-290B*, filed June 29, 2005.

The record includes, but is not limited to, the applicant's affidavit, an affidavit from the applicant's wife, affidavits from the applicant's mother-in-law, father-in-law, and grandmother-in-law, and medical documentation for the applicant's wife, mother-in-law, father-in-law, and grandmother-in-law. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

- (i) In general.-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.
- ...
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

In the present application, the record indicates that the applicant entered the United States in 1997 using his brother's passport. On January 24, 2004, the applicant married Ms. [REDACTED], who is a United States citizen. On June 15, 2004, the applicant's wife filed a Form I-130 and an Application to Register Permanent Residence or Adjust Status (Form I-485). On May 23, 2005, the Form I-130 was approved. On May 17, 2005, the applicant filed an Application for Waiver of Ground of Inadmissibility (Form I-601). On June 1, 2005, the District Director denied applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his United States citizen wife.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen wife, not his wife's parents or grandmother. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

Counsel asserts that the applicant's wife would face extreme hardship if she relocated to Albania in order to remain with the applicant. The applicant's wife states she is very close to her family in the United States and that "moving to Albania would be difficult" for her. *Statement by* [REDACTED] dated February 12, 2005. She claims that if the applicant were ordered removed to Albania and she was pregnant, she would remain in the United States to have the child, but then she "would definitely bring the baby to Albania so we could be a family." *Id.* The AAO notes that the applicant and his wife had a baby in the United States on February 5, 2006. *See letter from counsel and additional evidence*, filed on August 15, 2005. The applicant's wife claims she and the applicant are the primary caretakers for her elderly grandmother, who suffers from heart disease. *Statement by* [REDACTED] dated February 12, 2005. At the time of the applicant's appeal, the applicant and his wife were living with the applicant's wife's grandmother; however, the applicant and his wife have since purchased a house of their own. *See letter from counsel and additional evidence*, filed on August 15, 2005. The applicant's wife claims that her parents also have substantial health issues, and "they have needed a lot of physical and emotional support over the last few years and will continue to need our help." *Statement by* [REDACTED] dated February 12, 2005. Additionally, the applicant's wife states she has medical insurance and a retirement plan through her company, and she would lose those benefits if she moved to Albania. *Id.* However, the applicant's wife states she loves the applicant very much

and “[i]f he was sent back to Albania [sic] [she] would go just to be with him, but would dearly miss [her] family, friends, and all of the great qualities and conveniences of the United States.” *Id.* The applicant states he would not want to return to Albania because his wife does not speak the language and he does not “want to lose all the benefits that [he earns] together with [his] wife, including health insurance, dental insurance, and car insurance.” *Statement by the applicant*, dated February 18, 2005. The applicant’s wife’s psychologist states she has been suffering from anxiety and depression because of the applicant’s immigration situation. *Letter from Dr. [REDACTED]* dated April 25, 2005. The evaluation did not establish that her depression and anxiety were of a serious nature or beyond that experienced by others in the same situation.

Counsel does not establish extreme hardship to the applicant’s wife if she remains in the United States, maintaining her employment and close proximity to her family. As a United States citizen, the applicant’s wife is not required to reside outside of the United States as a result of denial of the applicant’s waiver request. The AAO notes that the income from the applicant’s wife’s employment appears to be the main source of income for the family. *See 2004 Income Tax Return, Form 1040EZ*, dated March 21, 2005, and *Wage and Tax Statements for the applicant and [REDACTED]*. It does not appear that the applicant’s wife will experience a major financial hardship as a result of the separation from the applicant. The applicant’s wife faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, “election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed.” *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965). Further, beyond generalized assertions regarding country conditions in Albania, the record fails to demonstrate that the applicant will be unable to contribute to his family’s financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

Although the AAO is not insensitive to the applicant’s situation, the financial strain of visiting the applicant in Albania and the emotional hardship of separation are common results of separation and do not rise to the level of “extreme” as contemplated by statute and case law. In limiting the availability of the waiver to cases of “extreme hardship,” Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant’s wife 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 deportation or exclusion and does not rise to the level of extreme hardship.

United States court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Hassan, supra*, the Ninth Circuit Court of Appeals held further that the uprooting of family and separation from friends does not necessarily amount to

extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.