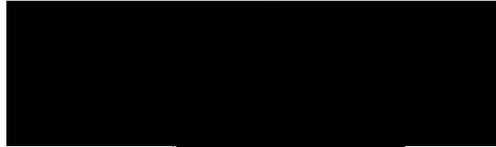


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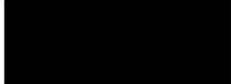
U.S. Citizenship
and Immigration
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FILE:



Office: Vienna, Austria

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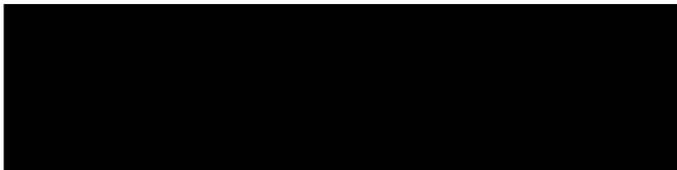
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IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and 1182(a)(9)(B)(v) respectively.

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), 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 Albania who was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact. The applicant was also 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 in excess of one year after April 1, 1997. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen spouse. She seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v) respectively, in order to reside in the United States with him.

The record reflects that the applicant entered the United States without inspection on July 25, 1996. The applicant was apprehended and placed in removal proceedings on February 5, 1997. As determined by the immigration judge, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589) as of February 23, 1998. The immigration judge denied this application and ordered the applicant removed from the United States on July 6, 2000. The applicant appealed this decision to the Board of Immigration Appeals (BIA). On November 6, 2002, the BIA affirmed, without opinion, the decision of the immigration judge. The applicant was apprehended on July 21, 2003 and removed on September 15, 2003.

The applicant and her husband were married on October 20, 2004 in Albania. The applicant's spouse filed the Form I-130 on October 26, 2004 at the U.S. Embassy in Tirana, Albania. The applicant subsequently filed an Application for Waiver of Ground of Excludability (Form I-601) and an Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212).

The OIC determined that the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act for having "enter[ed] the United States without inspection as well as actively tried to assist others (her parents) in doing the same thing and accepting unauthorized employment." *Decision of OIC*, dated June 20, 2006 at 2. The OIC also determined that the applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year after April 1, 1997, but the OIC did not specify the period(s) of unlawful presence. *Id.* at 1. The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Id.* at 3.

On appeal, counsel contends that the applicant "is not denying her immigration violations," but asserts that "[a]ssisting parents to enter the USA can not be equated to assisting a stranger in entering the USA." *Form I-290B, part 3*. Counsel further contends that the applicant has submitted

sufficient evidence substantiating extreme hardship to her U.S. citizen husband if the waiver application is not approved. *Id.*

The record contains, among other documents, an affidavit from the applicant's spouse dated May 26, 2005; a statement from the applicant; affidavits from [REDACTED] and [REDACTED], friends of the applicant's spouse; and a psychological assessment dated May 17, 2005 from [REDACTED]. The entire record has been reviewed in rendering a decision on the appeal.

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

- (i) 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.

Although the OIC found the applicant inadmissible under section 212(a)(6)(C)(i), the record does not reflect that the applicant has engaged in fraud or made any material misrepresentations to a U.S. government official. The evidence in the record does not show that the applicant made false statements to a U.S. government official in seeking to procure a visa, other documentation or admission to the United States, or other benefit provided under the Act for herself or on behalf of her parents. Entering the United States without inspection or accepting unauthorized employment are not acts that constitute fraud or misrepresentation under section 212(a)(6)(C)(i) of the Act. However, the record does show that the applicant is inadmissible under section 212(a)(6)(E) of the Act for alien smuggling. Section 212(a)(6)(E) provides:

- (i) In general.—Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of the law is inadmissible.
- (ii) Special rule in the case of family reunification.—Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 201(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.
- (iii) Waiver authorized.—For provision authorizing waiver of clause (i), see subsection (d)(11).

Section 212(d)(11) provides:

The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

In removal proceedings, the applicant admitted that she paid \$10,000 to have her parents smuggled into the United States. *Matter of [REDACTED]*. 68:11-13, 69:1-4 (July 6, 2000). On the basis of this admission, which the applicant later attempted to retract, the immigration judge determined that the applicant had violated section 212(a)(6)(E) of the Act:

With respect to voluntary departure, the Court finds respondent is barred from a finding of good moral character based on her admission that she was involved in the smuggling of her parents into the country. Smuggling is a violation of our laws, it is a drain on our economy and resources to govern our own borders. It disadvantages those who try to legally enter the country; and therefore, pursuant to Section 101(f)(3) the respondent is a member of one or more classes of persons "whether excludible [sic] or not" described in Section 212(a)(6)(E) . . .

Matter of [REDACTED] Oral Decision of Immigration Judge 17 (July 6, 2000).

As indicated above, counsel has not disputed on appeal that the applicant aided in the smuggling of her parents into the United States. The applicant is therefore inadmissible under section 212(a)(6)(E) of the Act. However, as the applicant is seeking admission as an immediate relative, and she aided only her parents in entering the United States in violation of law, she is eligible for consideration of a waiver under section 212(d)(11) of the Act. Although the AAO determines that the applicant is eligible for a waiver under section 212(d)(11) to assure family unity, the applicant is also inadmissible under section 212(a)(9)(B) and must therefore demonstrate that she is eligible for a waiver under section 212(a)(9)(B)(v) .

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

. . . .
(I) 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.

(iii) Exceptions.—

(II) Asylees.—No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

The record reflects that the applicant entered without inspection on July 25, 1996. She applied for asylum on February 23, 1998. The asylum application was pending no later than the date of the BIA's decision on November 6, 2002. The applicant was removed on September 15, 2003. The applicant was therefore unlawfully present from April 1, 1997 to February 23, 1998, and from November 6, 2002 to September 15, 2003. The OIC has asserted that the applicant was also employed without authorization, but the AAO finds that there is insufficient evidence in the record to support this assertion. Nevertheless, the record reflects that the applicant was unlawfully present in the United States for a cumulative period in excess of one year and is again seeking admission to the United States. Consequently, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant has not disputed that she is inadmissible on this ground.

Section 212(a)(9)(B)(v) of the Act provides, in pertinent part:

Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 [Secretary] 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 sections 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The only qualifying relative is the applicant's U.S. citizen spouse. If extreme hardship

to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The Ninth Circuit Court of Appeals has stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In his affidavit, the applicant’s spouse states that he has been suffering extreme hardship without his wife. He asserts that he “can not go back to live in Albania as I have been gone since June 1996.” He further asserts that he has no home or means of income in Albania. He indicates that he works “fully time in a dry cleaning business and [has] a small cleaning business on the side,” but that similar business opportunities in Albania are “virtually none.” He states that he tried to find a job and to start his own business while he was in Albania from October to December 2004, but was

unsuccessful. He states that he suffers from depression, which prevents him from working “[s]ome days.” The applicant and the friends of the applicant’s spouse confirm the assertions made by the applicant’s spouse in their affidavits.

In his evaluation, [REDACTED] states that, based on his three-hour interview with the applicant’s spouse, he diagnoses the applicant’s spouse with a major depressive disorder which is likely the result of separation from 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 spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO acknowledges that the applicant’s spouse experiences emotional hardship as a consequence of his separation from the applicant, but the evidence has failed to demonstrate that this hardship, when combined with other hardship factors, is extreme. The record reflects that the applicant and her spouse have been married since 2004, have only lived together as husband and wife for a few months, and were married after the applicant was removed from the United States. The timing of the marriage is meaningful, as it goes to the expectation of the applicant’s spouse that he would be able to reside with the applicant in the United States. *See Cervantes-Gonzalez*, 22 I&N Dec. at 566-67 (“the respondent’s wife knew that the respondent was in deportation proceedings at the time they were married . . . [which] goes to the respondent’s wife’s expectations at the time they were wed . . . [and] undermine[s] the respondent’s argument that his wife will suffer extreme hardship if he is deported.”).

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation from [REDACTED] is based on a single interview between the applicant’s spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant’s spouse or any history of treatment for the depressive disorder suffered by the applicant’s spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist’s findings speculative and diminishing the evaluation’s value to a determination of extreme hardship.

The AAO finds that the emotional hardship experienced by the applicant’s spouse is similar to that experienced by others separated from spouses as a consequence of inadmissibility, and the applicant has failed to show other hardship that, when viewed cumulatively, rises to the level of extreme hardship. The applicant has not submitted any evidence to substantiate the claim that he is experiencing financial hardship as a result of the applicant’s removal. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). The AAO acknowledges the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant’s spouse, and as demonstrated by the other evidence in the record, is the common result

of removal or inadmissibility. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

The applicant has also not demonstrated that her spouse would experience extreme hardship if he relocated to Albania. The applicant's spouse is a native of Albania. The applicant's spouse has stated that he was unable to obtain employment or start a business in Albania while he was there from October to December 2004, but he has not elaborated on his efforts or submitted other evidence to substantiate this claim. Furthermore, The inability to maintain one's present standard of living or pursue a chosen profession does not generally constitute extreme hardship, *Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has not established extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

In proceedings for application for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.