



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

H2

[Redacted]

FILE:

[Redacted]

Office: FRANKFURT, GERMANY

Date:

JUN 10 2008

IN RE:

Applicant:

[Redacted]

APPLICATION:

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:

[Redacted]

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 Officer-in-Charge, Frankfurt, Germany, 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 to be 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), which the Officer-in-Charge denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the Officer-in-Charge*, dated March 24, 2006. The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility.

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.

The record reflects that on January 15, 2003, the applicant was intercepted at the airport in Frankfurt, Germany, carrying a chemically altered U.S. visa. During her immigrant interview on October 30, 2003 at the consular section of the American Embassy at Tirana, Albania, the applicant did not reveal her previous attempt to travel to the United States, but revealed it during her second interview only after the consular officer indicated that he had a record of the incident.

The elements of a material misrepresentation are set forth in *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

The Officer-in-Charge found that the applicant's concealment of the incident had been willful and determined that it rendered her inadmissible under Section 212(a)(6)(C) of the Act.

The issue is whether the concealment of the incident was material. A concealment of facts is immaterial, if, had the applicant disclosed them, they would have been enough to justify the refusal of a visa. *See, e.g., United States ex rel. Iorio v. Day*, 34 F.2d 920 (C.A. 2, 1929) (Iorio's suppression of his imprisonment was not a ground of inadmissibility as facts would not have justified the vice consul in refusing a visa, had Iorio disclosed them); *United States ex rel. Teper v. Miller*, 87 F.Supp. 285 (S.D.N.Y., 1949) ("a suppressed fact is material only if the fact suppressed was a ground of exclusion under the law").

Here, the applicant attempted to board an airplane in Germany using a chemically altered U.S. visa. The Board of Immigration Appeals (BIA) in *Matter of D-L- & A-M*, 20 I&N Dec. 409 (BIA 1991), held that outside of the transit without visa context, an applicant is not excludable for fraud or willful misrepresentation of a material fact if no evidence indicates that “the alien presented or intended to present fraudulent documents or documents containing material misrepresentations to an authorized official of the United States Government in an attempt to enter on those documents.” The record does indicate that the applicant intended to make a material misrepresentation to an authorized official of the United States Government in order to gain admission into the United States. Thus, the matter concealed was a ground of inadmissibility; the concealment did constitute fraud or a material misrepresentation of fact to an authorized official of the United States government. The AAO therefore finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted

Section 212(i) of the Act provides that:

- (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 alien 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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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 to an applicant is not a consideration under the statute, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant’s naturalized citizen spouse. 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).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant

factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant’s husband must be established in the event that he joins the applicant to live in Albania, and in the alternative, that he remains in the United States without the applicant. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record contains a psychological evaluation, affidavits, a stock issuance certificate, a Schedule “B” Agreement, a naturalization certificate, a marriage certificate, a college acceptance letter, and other documents.

The psychological evaluation dated October 11, 2005 by [REDACTED], clinical psychologist, stated that the applicant’s husband has been in the United States for 11 years and all of his family members, that is, his mother, father, and brother are in the United States. [REDACTED] stated that “[i]n an attempt to relieve himself of his condition and frustration he mentions that on May 16, 2003 he got married to his wife [REDACTED].” [REDACTED] stated that the applicant’s husband indicates that he feels depressed and ill and not having his wife with him adds stress and worsens his condition. [REDACTED] conveyed that the applicant’s husband states that because his wife is not with him, he has had several anxieties such as isolating himself from everyone. [REDACTED] stated that the applicant’s husband has been her patient for over one year, and that he suffers from chronic anxiety disorder in which he is apprehensive, tense, and uneasy about the prospect of being alone and something terrible happening; and has symptoms consistent with major depressive disorder such as headaches, nausea, stomachs, and fear of having any relations with anyone but his immediate family. [REDACTED] further stated that the applicant’s husband’s weight has been dropping, that he is socially withdrawn, is hypervigilant, feels numb and sleepy, and also has difficulty sleeping.

The diagnostic formulation by [REDACTED] is: Axis I – Anxiety Disorder, Major Depressive Disorder, Chronic; Axis III – Recurrent Headaches; Axis IV – Separation from Family.

[REDACTED] stated that it is likely that the applicant’s husband’s psychological problems have affected his career advancement and social adjustment and that he requires psychotherapy treatment to help cope with trauma symptoms. [REDACTED] indicated that the applicant’s husband will undergo panic control therapy because there is no allotted time in which a patient recovers, the condition and therapy is ongoing.

[REDACTED] stated that the applicant’s husband:

[A]ppears to be apprehensive of significant risk of physical and psychological harm if a family member does not accompany him in order to overcome this depression. It is imperative to the on going [sic] treatment with [REDACTED] it is most likely that he will favor his wife’s presence.

In his affidavit the applicant’s husband stated that he married the applicant in Albania, is very much in love with her, and has panic attacks and depression since the denial of the visa and waiver and has been under Dr.

█'s continuous care because of this. He indicated that he came to the United States from Albania when he was 10 years old, along with his parents and brother, and his extended family, his grandmother, aunt, and cousins live in the United States. The applicant's husband conveyed that his life is in the United States and that he has supportive friends here and cannot imagine living in Albania. He stated that he earns \$1,000 each week and will not earn this salary in Albania, where there is political, economic, and social instability.

The applicant's affidavit is similar in content to that of her husband's.

In his letter, the applicant's husband stated that he attended college, is a half owner of a roofing company, and married a wonderful girl who has never been to the United States, but who he hopes to raise a family with here.

On appeal, counsel stated that the psychological evaluation was not properly weighed in determining extreme hardship to the applicant's husband. Counsel asserted that the applicant's husband has lived in the United States since he was a child and uprooting him to survive in Albania, one of the poorest countries in Europe, would be a significant disruption that would constitute extreme hardship. Counsel stated that the applicant's husband will have no ties in Albania and will be deprived of employment opportunities in the United States.

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

The AAO finds that the record fails to establish extreme hardship to the applicant's husband in the event that he were to remain in the United States without the applicant.

The applicant makes no claim of economic hardship if her husband were to remain in the United States without her.

With regard to family separation, courts in the United States have stated that "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).

The psychological evaluation indicated that the applicant's husband had an anxiety disorder prior to his marriage as he stated that he married the applicant "[i]n an attempt to relieve himself of his condition and frustration." Although the applicant's husband conveyed that he needs the applicant in the United States for emotional support, the record fails to demonstrate an ongoing relationship between the applicant and her husband since their marriage in 2003. The record as constituted is therefore insufficient to show the applicant's husband would experience extreme emotional hardship if he remained in the country without his wife.

The record is insufficient to establish that the applicant's husband will experience extreme hardship if he joined the applicant to live in Albania.

The conditions in the country where the applicant's husband would live if he joined the applicant are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

The applicant's husband indicates that he now earns \$1,000 each week and will not earn the same income in Albania. In *Matter of Chumpitazi*, 16 I&N Dec. 629 (BIA 1978), the BIA held that "[i]t has long been clear that loss of a job and the concomitant financial loss incurred is not synonymous with extreme hardship." (citation omitted).

Counsel indicates that the applicant's husband will have difficulty adjusting to life in Albania, the poorest country in Europe. In *Kuciemba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996) the court states that "[g]eneral economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien." (citation omitted). It is noted that although the applicant's husband does not have family members living in Albania, he will have the emotional support of his wife and her family members to help ease him into daily life in Albania.

The AAO finds that the additional factors that *Matter of Ige* indicates are needed to combine with economic detriment are missing here. The applicant therefore fails to demonstrate extreme hardship to her husband in the event he joined her to live in Albania.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.