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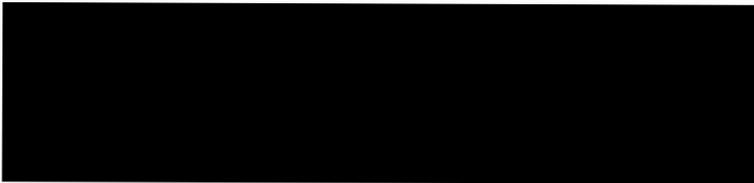
IN RE:

MIRDUH SPAHIJA

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:



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.

A handwritten signature in cursive script, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Cleveland, Ohio, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 procuring admission to the United States by fraud or willful misrepresentation. The applicant's spouse is a U.S. citizen and he is seeking 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.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on his spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, at 7, dated August 24, 2006.

On appeal, counsel asserts that the district director's decision is an abuse of discretion and manifestly contrary to law. *Form I-290B*, received September 19, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, a letter from the applicant's spouse's physician, a psychological evaluation of the applicant's spouse, reports from the applicant's spouse's social workers, medical records for the applicant's spouse, the applicant's statement, and country conditions information on Albania. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was admitted to the United States with a fraudulent passport on May 19, 2003. As a result of this misrepresentation, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

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.

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 is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Albania or remains in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Albania. Counsel states that the applicant's spouse was born in Ohio, has lived her entire life in Ohio, has a sister with whom she is close, has four other siblings in the United States, has a nephew with two birth defects, and has no family ties in Albania other than the applicant. *Brief in Support of Appeal*, at 2-3, undated. Counsel states that the applicant's spouse has an active role in caring for her nephew and she spends three nights a week with him. *Id.* at 6. Counsel states that the applicant's spouse has owned her own business for over twenty years, she has twelve employees, she is not licensed to provide massotherapy services in Albania and it would be impossible for her to start her business in Albania. *Id.* at 7, 11. The record includes the applicant's spouse's statement which supports counsel's claims.

Counsel states that the applicant's spouse has mitral valve prolapse which causes breathing problems, chest pain and anxiety attacks; and she has been to the emergency room on numerous occasions for this problem. *Id.* at 4. The record includes the applicant's spouse's medical records which support counsel's claims.

The applicant's spouse's physician states:

[The applicant] has been my patient for over ten (10) years....I have seen her through some emotional stress, as well as psychological and physical problems. She has handled them poorly and has become what I feel is a dependent type of individual....I have seen [the applicant] for her medical problems including mitral valve prolapse with complications of cardiac arrhythmias, chronic fatigue syndrome which has manifested itself in depression, frequent urinary tract infections...hypoglycemic episodes...and panic attacks from which she

has slowly recovered...her moving to Albania where there is poor medical care would indeed be a devastating blow to the physical and psychological aspects of [the applicant's] care.

Letter from [REDACTED] D.O., at 1-2, dated September 18, 2006.

The applicant's spouse's psychologist states:

...When she has an anxiety attack she cannot catch her breath, feels like she is having a heart attack, gets hot and sweaty, and has blacked out...[The applicant] has severe anxiety and a fear of traveling...[The applicant] is in a constant state of anxiety and worry about many different things in her life. [The applicant] does not travel well due to her panic attacks.

*Psychological Evaluation of the Applicant's Spouse Prepared by [REDACTED] Psy.D.*, at 2, dated March 10, 2006. <sup>1</sup>The applicant's spouse's psychologist further states the applicant's spouse would be devastated by giving up her career and business as they are one of the only senses of security that she has. *Id.* at 4.

Counsel states that the applicant's spouse's condition requires that she obtain medications and state-of-the-art medical care. *Brief in Support of Appeal*, at 4. The record reflects that medical facilities and capabilities in Albania are limited beyond rudimentary first aid treatment, prescription drugs may be unavailable, and emergency and major medical care is inadequate. *U.S. Department of State, Consular Information Sheet, Albania*, at 3, dated June 6, 2006.

Counsel states that the applicant's spouse has never been to Albania, she does not speak Albanian and she would face social isolation compounded by her anxiety disorder and nationality. *Brief in Support of Appeal*, at 6. Based on the totality of the hardship factors presented, the AAO finds that the applicant's spouse would suffer extreme hardship if she resided in Albania permanently.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant's spouse's emotional anxiety, which manifests itself in medical problems, would be exacerbated over concerns for the applicant's safety and her separation from him. *Id.* at 8. The applicant's spouse's psychologist states that the applicant's spouse's father was physically abusive, all of her sisters married abusive men, she has had terrible difficulty trusting men due to her abuse, the applicant is different than the other men she has met, the applicant is her only source of emotional support, and she would not be able to handle the stress of work and caring for her sister and nephew without him. *Psychological Evaluation of the Applicant's Spouse Prepared by [REDACTED] Psy.D.*, at 1-2. The applicant's social worker states that the applicant's spouse completely relies upon the applicant, she would regress in her gains if he were removed, her anxiety/panic attacks would most probably

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<sup>1</sup> The district director states that the applicant's spouse's psychologist referenced the applicant's spouse's fear of flying, but the applicant's spouse included plane tickets to Florida and New Jersey and this demonstrates that she is not terrified of flying enough to be prevented from doing so. *Decision of the District Director*, at 4. However, the applicant's spouse's psychologist states that the applicant's spouse has severe anxiety and panic when it comes to travel and places that she does not know. *Psychological Evaluation of the Applicant's Spouse Prepared by [REDACTED] Psy.D.*, at 4. Therefore, the record indicates that the evidence in regard to travel is not contradictory.

resume, and the applicant's absence would have a negative impact on the system that has been part of her recovery. *Letter from [REDACTED]; L.I.S.W.*, at 2, dated September 13, 2006. The applicant's spouse's former social worker states that the applicant's spouse suffered from depression due to a series of unsuccessful relationships and she would be re-traumatized if she were separated from the applicant. *Letter from [REDACTED] L.I.S.W.*, at 2, dated October 9, 2006.

The applicant's spouse's public accountant states that the applicant's spouse would not be able to afford a private bookkeeper, the applicant has taken over the bookkeeping and administrative aspects of his spouse's business, there has been an increased efficiency and effectiveness in the business as a result of the applicant's involvement, and the applicant's spouse would suffer extreme hardship if the applicant were no longer working there. *Letter from [REDACTED] C.P.A.*, at 1-2, dated October 13, 2006.

Based on the record, the AAO finds that the applicant's spouse would suffer extreme hardship if she remained in the United States without the applicant.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether...relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors are the applicant's use of a fraudulent document to enter the United States and unauthorized period of stay.

The favorable factors include the presence of the U.S. citizen spouse, lack of a criminal record and extreme hardship to the applicant's spouse.

The AAO notes that the violations of law committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.