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U.S. Department of Justice

Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



FILE:  Office: San Francisco

Date: FEB 27 2007

IN RE: Applicant: 

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

IN BEHALF OF APPLICANT:



**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

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

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO) on appeal. The matter is before the AAO on a motion to reopen. The motion will be granted, and the order dismissing the appeal will be withdrawn. The application will be approved.

The applicant is a native and citizen of Albania who was admitted to the United States as a nonimmigrant visitor on December 11, 1995, with authorization to remain until June 10, 1996. The applicant was granted an extension of temporary stay until September 10, 1996. She failed to depart by that date. The applicant became the beneficiary of an approved petition for alien relative filed by her brother on January 24, 1997. The applicant submitted an application to adjust status without paying the fee and without a visa being available. On April 26, 1998, she married a native of Albania and naturalized U.S. citizen in a civil ceremony. Her husband (hereafter referred to as [REDACTED]) filed a petition for alien relative in her behalf on February 14, 2000, and she was granted employment authorization. The visa petition was approved on March 21, 2001.

The district director found the applicant to be inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act, (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(I), for having been unlawfully present in the United States for a period of more than 180 days but less than 1 year. The applicant seeks the above waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The district director determined that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. The AAO affirmed that decision on appeal after failing to receive the stipulated documentation within the requested 60 days.

On motion, counsel states that the applicant and [REDACTED] left the United States in June 2000 so they could have a traditional Roman Catholic marriage ceremony in their native Albania with [REDACTED] family present. Counsel asserts that [REDACTED] brother is paralyzed and his sister is mute, therefore, they cannot travel. Counsel emphasizes the emotional hardship that [REDACTED] would suffer if he were permanently separated from his wife.

Counsel submits a police report that makes reference to the applicant having been raped in 1995 by a man who invoked the "code of the mountains" which meant that if a man expressed interest in a woman, she became his property, justifying rape. Although the rapist was killed in 1998, his family still laid claim to the applicant, and she and her husband were issued a death threat by the rapist's family members when they returned to Albania for their wedding. Counsel states that the thought of that death threat weighs heavily on [REDACTED] mind. Counsel indicates that the applicant was so ashamed of being a rape victim that she only told her immediate family [REDACTED] and the police. She never mentioned

it previously to her prior attorney or to the Service. Counsel also submits documentation regarding the "blood feuds" that prevail in the mountains of Northern Albania.

It is noted that no documentation was previously submitted regarding any hardship to the applicant's lawful permanent resident parents.

On motion, counsel also indicates that the applicant's lawful permanent resident parents will undergo extreme hardship as her mother suffers from depression and at times is suicidal when she thinks about her daughter being kidnapped and raped, and about what would happen to her daughter if she returned to Albania alone. The record indicates that the applicant's mother [REDACTED] suffers from a heart problem, has been under the care of a cardiologist since April 2002 and was prescribed medication.

On motion, counsel submits a psychological evaluation of the applicant's spouse in which it is noted that he suffers from persistent nightmares caused by the events he endured in Albania and from his recent memories of the threats he and the applicant received from the rapist's family when they returned for their wedding.

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

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

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States, whether or not pursuant to section 244(e), prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, ...is inadmissible.

(v) The Attorney General 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 Attorney General 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

After reviewing the IIRIRA amendments to the Act relating to fraud, misrepresentation and unlawful presence in the United States, and after noting the increased penalties Congress has placed on such activities, including the narrowing of the parameters for

eligibility, the re-inclusion of the perpetual bar in some instances, eliminating children as a consideration in determining the presence of extreme hardship, and providing a ground inadmissibility for unlawful presence after April 1, 1997, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud, misrepresentation and unlawful presence of aliens in the United States.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board stipulated that the factors deemed relevant in determining whether an alien has established "extreme hardship" in waiver proceedings under section 212(i) of the Act include, but are not limited to, the following: (1) the presence of a lawful permanent resident or United States citizen spouse or parent in this country; (2) the qualifying relative's family ties outside the United States; (3) 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; (4) the financial impact of departure from this country; (5) and finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

This particular matter contains hardship issues that impact three qualifying relatives. The applicant's spouse, who escaped from Albania and became a refugee, and her father and mother. The mother's condition is exacerbated by her recollection of the early 1990's when her son escaped from Albania to become a refugee and she feared that he had been killed. Those memories are returning as she worries about the applicant having to return to Albania alone.

A review of the documentation now present in the record, when considered in its totality, establishes the existence of hardship to the applicant's husband, father and mother caused by separation that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to remain in the United States.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General and pursuant to such terms, conditions, and procedures as he may by regulations prescribe.

The favorable factors in this matter are the applicant's family ties, the presence of extreme hardship, and the absence of a criminal record. The unfavorable factors include the applicant's unlawful presence and employment without Service authorization. The applicant has demonstrated that the favorable factors outweigh the unfavorable ones in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. 1361. Here, the applicant has met that burden. Accordingly, the motion will be granted. The order



dismissing the appeal will be withdrawn, and the application will be approved.

ORDER: The motion is granted. The order of August 5, 2002, dismissing the appeal is withdrawn. The appeal is sustained and the application is approved.

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