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U.S. Citizenship
and Immigration
Services

H2

[redacted]

FILE: [redacted] Office: VIENNA, AUSTRIA Date: AUG 21 2007

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]

PUBLIC COPY

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Officer in Charge, Vienna, Austria. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

The applicant is a native and citizen of Albania who was found to be inadmissible to the United States pursuant to sections 212(a)(6)(C)(i), 212(a)(9)(A)(ii)(II), 212(a)(9)(B)(i)(II), and 212(a)(7)(A)(I)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i), 1182(a)(9)(A)(ii)(II), 1182(a)(9)(B)(i)(II) and 1182(a)(7)(A)(I)(i). The applicant seeks a waiver of his grounds of inadmissibility under sections 212(i), 212(k) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i), 1182(k) and 1182(a)(9)(B)(v).

The officer in charge found that the applicant had failed to establish his wife would suffer extreme hardship if he were refused admission into the United States. The application was denied accordingly.

On appeal the applicant asserts, through counsel, that his wife will suffer extreme emotional, physical and financial hardship if he is denied admission into the United States. The applicant asserts that his Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601 Application) should therefore be approved.

Section 212(a)(7)(A) of the Act provides in pertinent part:

> (i) Documentation requirements.- . . . [I]n general.-Except as otherwise specifically provided in this Act, any immigrant at the time of application for admission-
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> > (I) who is not in possession of a valid unexpired immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by this Act, and a valid unexpired passport, or other suitable travel document, or document of identity and nationality if such document is required under the regulations issued by the Attorney General [Secretary] under section 211(a), or
> >
> > (II) whose visa has been issued without compliance with the provisions of section 203, is inadmissible.
>
> (ii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (k).

Section 212(k) of the Act provides that:

> Any alien, inadmissible from the United States under paragraph (5)(A) or (7)(A)(i) of subsection (a), who is in possession of an immigrant visa may, if otherwise admissible, be admitted in the discretion of the Attorney General [Secretary] if the Attorney General [Secretary] is satisfied that exclusion was not known to, and could not have been ascertained by the exercise of reasonable diligence by, the immigrant before the time of departure of the vessel or aircraft from the last port outside the United States and outside foreign contiguous territory or, in the case of an immigrant coming from foreign contiguous territory, before the time of the immigrant's application for admission.

The AAO notes that the section 212(a)(7)(A) of the Act, ground of inadmissibility is not applicable in the present matter as it generally applies to an application for admission at the port of entry. It is not a ground of inadmissibility that is waived through the filing of a Form I-601 application.

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

> 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 applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, in that, on or about October 7, 2001, the applicant presented a fraudulent Norwegian passport to U.S. immigration officials in an attempt to gain admission into the United States.

Section 212(i)(1) of the Act provides that:

> The Attorney General [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.

Section 212(a)(9)(B) provides in pertinent part that:

> (i) [A]ny alien (other than an alien lawfully admitted for permanent residence) who-
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> . . .
>
> (II) 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.
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> (ii) Construction of unlawful presence.-For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

The record reflects that on or about October 7, 2001, the applicant attempted to procure admission into the United States with a fraudulent passport. The applicant was found to be inadmissible. He was paroled in to apply for asylum. The applicant's asylum case was denied by an immigration judge, and he was found to be inadmissible and ordered removed on November 28, 2003. The applicant remained unlawfully in the United States until November 2005. The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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

> (v) Waiver. – The Attorney General [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 Attorney General [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.

The applicant married a U.S. citizen on April 6, 2005. The applicant's wife is a qualifying relative for section 212(i) and section 212(a)(9)(B)(v) of the Act, waiver of inadmissibility purposes.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors that it deemed relevant in determining whether an alien has established extreme hardship for purposes of a waiver of inadmissibility. These 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. "[R]elevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *See Matter of Ige,* 20 I&N Dec. 880, 882, (BIA 1994.)

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996.) U.S. court decisions have repeatedly held that the common results of deportation (removal) or exclusion (inadmissibility) are insufficient to prove extreme hardship. *See Perez v. INS, supra. See also, Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991.)

The AAO notes that less weight is given to equities acquired after a deportation (removal) order has been entered. *See Garcia-Lopez v. INS,* 923 F.2d 72 (7th Cir. 1991.) The weight given to hardship to a U.S. citizen or lawful permanent resident spouse is diminished if the parties married after the commencement of deportation (removal) proceedings, and with knowledge that the alien might be deported. *See Ghassan v. INS,* 972 F.2d 631 (5th Cir. 1992). In *Cervantes-Gonzalez, supra,* the Board noted that an alien's wife knew that he was in deportation proceedings at the time they were married. The Board stated that this factor went to the wife's expectations at the time of her marriage, because she was aware that she might face the decision of parting from her husband or following him to his country in the event that he was ordered deported. The Board found this factor to undermine the alien's assertion that his wife would suffer extreme hardship if he were deported from the United States.

The record reflects the applicant was found to be inadmissible when he attempted to procure admission into the U.S. in October 2001. He was paroled into the U.S. in order to apply for asylum. The applicant applied for asylum in January 2002, and was found to be ineligible. He was ordered removed from the United States on November 23, 2003, about four months after the applicant claims to have met his future wife. The applicant and his wife were married in the U.S. on April 6, 2005. The AAO notes the applicant's assertion that his attorney filed an appeal of his Order of Removal, and that he was unaware that he needed to leave the United States prior to discovery of this fact in November 2005. The applicant's assertion is not supported by corroborative evidence, and the AAO finds that the applicant, and by extension his wife, should reasonably

have been aware that the applicant's presence in the United States was in violation of a November 2003, order of removal from the United States. Accordingly, any hardship pertaining to the applicant's separation from his wife will be accorded diminished weight.

The record reflects that the applicant's wife [redacted] was born in Albania on May 29, 1985, and that she immigrated to the United States with her parents, brother, and sister in 1999, when she was thirteen years old. [redacted] became a naturalized U.S. citizen on February 28, 2005, and she married the applicant on April 6, 2005, at the age of nineteen, in Michigan. [redacted] moved with the applicant to Albania around November 2005, and she filed a Form I-130, Petition for Alien Relative on behalf of the applicant while overseas. The February 23, 2007, officer in charge decision reflects that the applicant made no health or financial-related hardship claims, and that the hardship claimed by the applicant was that [redacted] is a U.S. citizen who is in college in Michigan, and that [redacted] wants to return home with her husband and continue school in the United States.

On appeal, the applicant asserts, through counsel, that his wife lived with him in Albania for over a year, but that she has since returned to the United States. The applicant asserts that although no health problems were claimed in the applicant's initial Form I-601 application, [redacted] has, since the time of filing the Form I-601 application, found it necessary to seek psychological treatment in the United States. The applicant additionally asserts that [redacted] suffers from several medical conditions.

The applicant submits an April 13, 2007, Patient Assessment, prepared by [redacted] which contains the following diagnosis for [redacted]: Primary: Major Depressive Single Episode; Secondary: 1) Generalized Anxiety Disorder, 2) Posttraumatic Stress Disorder. The Patient Assessment states that [redacted] experiences severe depression symptoms, underlying anxiety symptoms – fear of being alone, traveling, startle response, chronic rumination, and that she is overwhelmed with guilt and helpless feelings. To manage and alleviate depression symptoms, the Patient Assessment provides the following objectives for [redacted] "seek medical evaluation for antidepressant medication and medical exam to rule out disease factors"; 2) "revitalize deficiencies – sleep/appetite for vocational, leisure – problem-solving, health – self-care."

The record contains a March 12, 2007, Wayne Medical Center *Certificate to Return to Work/School* reflecting that [redacted] was seen at the center on March 12, 2007 for 1) pharyngitis, 2) depression, and 3) low back pain. The *Certificate to Return to Work/School* reflects that [redacted] was treated with 1) Ibuprofen, 2) Amoxicillin, and 3) Paroxetine. The record contains no evidence to indicate that [redacted] as sought any further psychological treatment for her diagnosed symptoms.

Affidavits from [redacted] her family members, and friends indicate that life in Albania was difficult and dangerous for [redacted], and that due to her present separation from her husband, she has been depressed and introverted. The affidavits indicate that despite being accepted at Eastern Michigan University, Ms. [redacted] unable to attend because of her emotional state. The affidavits indicate further that Albanian women are traditionally supported by their father or husband, and the affidavits indicate that [redacted] is also unable to attend university because she is no longer supported by her husband financially.

The AAO notes the U.S. Supreme Court holding that, "[t]he mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship." *See INS v. Jong Ha Wang,* 450 U.S. 139 (1981.) The AAO notes further that the record contains no evidence to establish that

under Albanian tradition, women are financially dependent on their father or husband. The applicant therefore failed to establish the assertion that, as an Albanian woman, she must be financially dependent on her father or husband. Moreover, the record lacks evidence to establish that [redacted] is unable to work, go to school, or support herself financially.

The record contains a May 19, 2005 medical record from Westland Quality Health, indicating that an ultrasound of [redacted]'s pelvis revealed minimal fluid in the posterior cul-de-sac. The record also contains a January 20, 2005 laboratory result for [redacted] from Quest Diagnostics. The above medical evidence fails to establish that [redacted] has been treated for, or presently requires treatment for, a medical condition.

The record contains a copy of a March 9, 2007, prescription that [redacted] obtained in Albania, reflecting that [redacted] was treated with anti-allergic cortisones for a year at the Clinic Hoxhallari in Albania, for, "rhinopharungites allergy and phlegm and cough and difficulties on breathing by nose," but that her improvement was temporary due to the dust and humidity in the environment.

U.S. Department of State country information on Albania, submitted by the applicant reflects that:

> Medical facilities and capabilities in Albania are limited beyond rudimentary first aid treatment. Emergency and major medical care requiring surgery and hospital care is inadequate due to lack of specialists, diagnostic aids, medical supplies, and prescription drugs. . . . As prescription drugs may be unavailable locally, travelers may also wish to bring extra supplies of required medications.

The AAO finds that the evidence in the record fails to demonstrate that [redacted] suffers from a serious health condition which requires special medical treatment or that cannot be treated in Albania.

The 2006 Department of State country condition information submitted by the applicant indicates that women are not accorded equal career opportunities in Albania, and that trafficking in women remains a problem. The Report states further, however, that Albania "[w]as deemed by international observers to no longer be a significant country of destination or transit" for trafficking of women. Moreover, the U.S. Ninth Circuit Court of Appeals held in *Ramirez-Durazo v. INS,* 794 F.2d 491, 498 (9th Cir. 1986), that hardship involving a lower standard of living, difficulties of readjustment to a different culture and environment and reduced job opportunities, did not rise to the level of "extreme hardship." In addition, the Board held that distress from being unable to reside close to family in the United States is not the type of hardship that is considered extreme. *See Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship.)

Upon review of the totality of the evidence, the AAO finds that the applicant has failed to establish that his wife will suffer extreme hardship if the applicant is denied admission into the United States. It is noted that any hardship pertaining to the applicant's separation from his wife is accorded diminished weight based on the fact that [redacted] should reasonably have known at the time of her marriage that the applicant was under an order of removal from the United States. The AAO finds further that the applicant failed to establish that [redacted] would suffer emotional, physical or financial hardship beyond that commonly associated with removal if she moved to Albania with the applicant, or if she remained in the United States.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. A review of the evidence in the record, when considered in its totality, reflects that the applicant has failed to establish that his will suffer extreme hardship if he is denied admission into the United States. Because the applicant failed to establish eligibility for a waiver of his grounds of inadmissibility, no purpose would be served in granting the Form I-212, Application for Permission to Reapply for Admission into the United States and it was properly denied by the officer in charge.

ORDER: The appeal is dismissed. The application is denied.