

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529



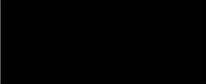
U.S. Citizenship
and Immigration
Services

PUBLIC COPY

tlz



FILE:



Office: VIENNA, AUSTRIA

Date: JAN 25 2008

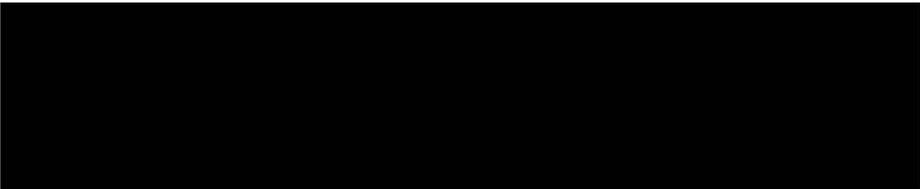
IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 212(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.

Robert P. Wiemann, 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, [REDACTED] is a native and citizen of Yugoslavia, 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 seeking to enter the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the OIC denied, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the OIC*, dated January 4, 2007. The applicant submitted 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 June 20, 1995 the applicant used an altered and photo-switched Bulgarian passport in the name "[REDACTED]" in an attempt to enter the United States at the Boston Airport. On appeal, counsel asserts that the applicant is not inadmissible for misrepresentation as this charge was withdrawn by the legacy Immigration and Naturalization Service. Although the misrepresentation charge was dismissed as to the applicant's asylum application, the dismissal does not relate to the waiver application, which is a separate application, and counsel cites to no authorities in support of his assertion.

Furthermore, it is noted that the immigration judge denied the applicant's asylum application, finding that he assisted in the persecution of others on account of one of the five statutory grounds; failed to present sufficient evidence to establish a well-founded fear of persecution based on one of the required statutory grounds; failed to establish that a favorable discretionary finding is warranted because of the lack of fulfillment of its requirements; and had established safe haven in a third country, Albania.

The AAO therefore finds the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to gain admission into the United States by fraud or willfully misrepresenting a material fact, his true identity, to immigration officials.

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 the applicant and his child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and his child will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is [REDACTED] the applicant's naturalized citizen wife. 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).

The record contains letters, affidavits, birth certificates, a marriage certificate, photographs, and medical records of the applicant and his daughter.

The letter dated May 10, 2007 from [REDACTED], states that the applicant's daughter has been diagnosed with Beta thalassemia minor, which causes anemia and that this is usually an inherited condition.

The April 27, 2007 letter from [REDACTED] states that the applicant's daughter was found to have microcytic hypochromic anemia. The letter conveys that the applicant, who is living in Albania, has had a kidney transplant for kidney failure.

The most recent letter in the record, which is dated January 6, 2005, from [REDACTED] of [REDACTED] indicates that the applicant was hemodialyzed three times weekly within William Beaumont Hospital system for endstage renal disease. The letter states that the applicant was to undergo evaluation for a renal transplant.

The December 20, 2001 letter from [REDACTED] states that the applicant's average monthly earnings are \$2,100 per month.

In an undated affidavit [REDACTED] states that she lived comfortably in the United States prior to her husband's deportation in 2005. She states that he worked as a painter and she worked in retail outlets and attended Carnegie Institute in order to become a medical assistant. She indicates that her husband's deportation hurt her emotionally and financially. She states that she earns approximately \$25,000 annually as a patient assistant in a rehabilitation clinic; and lives with her child, who was born in 2001, in a small apartment. She states that she pays for childcare and latch-key services, which are over \$150 per week, and will now have to pay for her daughter's treatment of anemia. [REDACTED] states that her daughter is coping with the loss of her father. She states that joining the applicant in Montenegro would be difficult as Albanian is her native tongue and Montenegrins speak Serbian, a language that neither she nor her daughter speaks. She states that the climate in Montenegro towards ethnic Albanians and Albanian speakers is not very positive and that Albanians are discriminated against. She states that she would not be able to find work and earn a living and would not find employment in a doctor's office in Montenegro. She states that her daughter would attend school in a shack without a chalkboard and that her daughter's anemia is a concern as healthcare in Montenegro is not good. [REDACTED] states that her husband lives on a mountain in a ramshackle house,

with the nearest city one hour away and reached by a dirt road. She states that her husband does not own a car and works as a goat herder, farming just enough to sustain him. [REDACTED] states that she is Catholic and Montenegro is an Eastern Orthodox country where religious persecution exists. [REDACTED] states that her daughter visits her grandparents three times a week in the United States and she would hate to see them separated. She states that her parents fled Montenegro in 1978, coming to the United States.

The AAO has carefully considered all of the documentation in the record in rendering this decision.

“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 wife must be established in the event that she joins the applicant; and in the alternative, that she remains in the United States. 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 fails to reflect that [REDACTED] would experience extreme hardship if she remained in the United States without her husband.

[REDACTED] states that she would experience financial hardship without her husband’s income as her income is not enough to support her and her daughter. The applicant provided no documentation of [REDACTED] household expenses, which are need to show that [REDACTED] income is insufficient to meet monthly household expenses. 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 present record is sufficient to establish that the applicant’s wife would endure extreme hardship if she were to join the applicant in Yugoslavia.

The conditions in the country where [REDACTED] would live if she joins her husband 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 record shows that in the 1990s human rights violations occurred in the regions surrounding Montenegro and in Montenegro ethnic Albanians were discriminated against. The AAO finds that in the context of the recent history of Montenegro and its surrounding regions, the applicant's wife would experience extreme hardship in Montenegro as an Albanian speaker and a Catholic.

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.

The applicant established extreme hardship to his wife if she were to join him to live in Montenegro. But the record fails to support a finding of significant hardships over and above the normal economic and social disruptions involved in removal so as to warrant a finding of extreme hardship in the event that the applicant's wife remained in the United States without him. 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).

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

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.