



U.S. Citizenship
and Immigration
Services

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H2

[REDACTED]

FILE:

[REDACTED]

Office: FRANKFURT, GERMANY

Date: MAR 06 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 sustained.

The applicant is a native and citizen of Macedonia 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 is married to a U.S. citizen. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the Officer-in-Charge denied, finding that the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the Officer-in-Charge*, dated March 20, 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 the applicant entered the United States using a Slovenian passport in the name [REDACTED]

It conveys that the applicant was inspected at the Chicago, Illinois, Port of Entry on October 21, 1999, and was admitted under the visa waiver program using the fraudulent passport.¹

Based on the documentation in the record, the AAO finds that the applicant gained admission into the United States by misrepresenting his true identity to a U.S. immigration inspector. The finding of inadmissibility under section 212(a)(6)(C) of the Act is therefore correct.

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 is not a consideration under the statute and will

¹ Though not related to his inadmissibility, the AAO notes that the applicant was later encountered attempting to obtain social security benefits through a fraudulent lawful permanent resident stamp in his passport.

be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's 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 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.

On appeal, counsel states that the applicant has lived with his wife for nearly three years before filing the waiver application and has lived with her for almost another year until she returned to the United States on April 6, 2006. He states that the applicant's wife suffers from mental and physical exhaustion and severe stress because of the current situation with her husband. Counsel states that the applicant's wife decided to return to the United States to get proper prenatal care and financial support for her unborn child. Counsel states that the prospects for employment in Macedonia are nonexistent because the economy was devastated by the war. He states that the applicant has been unable to find employment as an auto mechanic. Counsel states that the applicant's spouse cannot find employment in Macedonia because she is a U.S. citizen. He states that the applicant's wife left her job in the United States as a film developer to be with her husband. Counsel states that it will be financially difficult for the applicant's wife to pay for day care in the United States and support her husband in Macedonia or return to Macedonia with the baby, where the country is economically and politically unstable. He states that the *Matter of Cervantes-Gonzalez* hardship factors are present here. He states that the applicant's wife would be separated from her community and church in the United States, which assist her with her needs, if she lives in Macedonia. Counsel states that the applicant's wife lived in Macedonia while a minor, but desired to come back and live in the United States.

The May 9, 2006 letter by Crown Point Obstetrics and Gynecology, P.C. conveys that October 20, 2006 is the expected delivery date of the applicant's wife. The letter states that the applicant's wife is having a difficult time coping with the pregnancy and separation from her husband, and that she would benefit by having her husband with her.

The record contains documents describing the economic and political situation in Macedonia. The document by GlobalEdge conveys that in 2003 the official unemployment rate in Macedonia was 36.7%. The Human Rights Watch World Report dated 2005 conveys that the armed conflict between the Macedonian majority and Albanian minority reached a climax in 2001, and that relations remained tense throughout 2004.

The affidavit by the applicant's wife states that she applied for a hardship waiver for her husband based on her health and financial problems, the hardships of living in Macedonia, and separating from her church and community in the United States. She states that she returned to the United States on April 6, 2006 because of her pregnancy. She conveys that she fears that she would not receive proper medical care and attention for her mental health and pre-natal care. She states that she will have to be the sole provider for her and her baby because she will not be able to survive financially in Macedonia due to its economic situation. She states that her family and friends in the United States will be able to help her take care of the baby when she finds a job to support her baby and husband. She states that it will be a severe emotional and financial hardship for her if she cannot bring her husband to the United States. She conveys that she will not be able to afford to visit her husband in Macedonia because of the cost of travel.

The record indicates that the applicant has been unable to find employment in Macedonia.

The applicant's wife states that she suffers from mental and physical exhaustion and is developing severe anxiety due to stress in resolving the crisis of the past two years. She states that she needs to see a psychiatrist and gynecologist and that this type of health service is not available where they reside, and that even if the services were available they would be unaffordable. She states that [REDACTED], a psychiatric specialist; [REDACTED], a gynecology and obstetrics specialist; and [REDACTED], an internal cardiology specialist, indicate the medications and treatment needed. However, she states that she has difficulty obtaining medication due to cost and availability. She states that treatment for conceiving a child and for ongoing psychiatric care is not available, and that although she is in danger of being hospitalized, there is no psychiatric/gynecological center available, and that there is no medicine and facility for treatment by a gynecologist. She states that she moved to Macedonia with her husband in December 2003 and for this reason lost her job in the United States, and has had a serious decline in her standard of living while in Macedonia. She conveys that she cannot have children because there is no money and no place to obtain medical care.

The report of [REDACTED] with the General Hospital – Ohrid, dated December 6, 2005, states that the applicant's wife has resided in Macedonia for two years and is a regular patient in their ambulance [sic] because of her depressive state, which the doctor attributes to "the adjustment crisis and chronically post trauma r-vo." She states that the applicant's wife has been given, for a long period, anti-depressive therapy, but it has not had any significant effect. She states that she believes the present mental state involves her migration in the United States. The doctor's diagnosed her condition as reactive depressive state (situation conditioned) F 32.1, and prescribed medication.

The diagnosis by [REDACTED], dated December 7, 2005, conveys that the applicant's wife has gastroduodenitis chr. HTA labilis, which [REDACTED] states is a disorder of psychosomatic etiology.

The letter of the same date by [REDACTED] states that the applicant's wife has a depressive crisis "because of infertility and the situation of migration abroad" and the letter is being issued to solve her problem with traveling.

The affidavit of support signed on July 29, 2003 reflects the hourly wage of \$12.00 and the annual salary of \$18,000 for the applicant's wife.

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

The record conveys that the applicant's wife earned \$12.00 an hour in 2003 working for a printing company, and that she resigned from the printing position in December 2003 to live in Macedonia with her husband, where they were unable to find employment. It shows that the applicant's wife was pregnant with October 20, 2006 as the expected delivery date. Based on the income earned by the applicant's wife in 2003, the AAO finds that she would not be able to financially provide for a newborn.

The record shows that the applicant's wife has a stress ulcer (gastroduodenitis) of which the etiology is considered psychosomatic by [REDACTED]. It shows that the applicant's wife resided in Macedonia for two years and was regularly treated by [REDACTED] for depression. [REDACTED] states that the applicant's wife has a depressive crisis "because of infertility and the situation of migration abroad." The AAO finds that, as shown by the record, if the applicant's wife were to remain in the United States without her husband, the emotional hardship that she would experience is unusual or beyond that which is normally to be expected upon removal.

The AAO finds that the applicant has established that the cumulative effect of the financial and emotional hardship his wife would experience if she remains in the United States without him rises to the level of extreme hardship.

The conditions in Macedonia, the country where the applicant's wife would join 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 conveys that the applicant's wife lived with him for two years in Macedonia, and while there, she was regularly treated for depression, which was considered to arise from her husband's immigration situation. The record reflects that the applicant and her husband were unable to obtain employment while she lived in Macedonia. Based on these circumstances, the AAO finds that the applicant would experience extreme hardship if she were to join her husband to live in Macedonia.

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 involved in deportation has 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 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).

The grant or denial of the above waiver does not depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted.

The favorable factors in this matter are the extreme hardship to the applicant's wife and to their child who was expected to be born in 2006 and the lack of a criminal record. The unfavorable factors in this matter are the applicant's misrepresentation, and his use of a fraudulent lawful permanent resident stamp in his Macedonian passport to obtain social security benefits.

While the AAO cannot emphasize enough the seriousness with which it regards the applicant's immigration violations, it finds that the hardship imposed on the applicant's wife and on their child who was expected to be born in 2006, as a result of his inadmissibility, outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.