

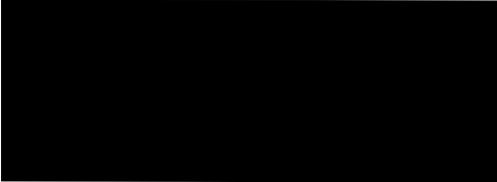
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE: 

Office: VIENNA

Date: AUG 11 2009

IN RE: Applicant: 

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

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom  
Acting Chief, Administrative Appeals Office

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

The applicant, a native and citizen of Albania, was found 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 having attempted to procure entry to the United States by fraud and/or willful misrepresentation, and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant sought waivers of inadmissibility pursuant to sections 212(i) of the Act, 8 U.S.C. § 1182(i), and 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to be able to return to the United States to reside with his U.S. citizen spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated December 27, 2006.

In support of the appeal, counsel for the applicant submits a brief, dated March 8, 2007, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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

- (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.
  
- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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.

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

Aliens Unlawfully Present.-

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

....

(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.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (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...

Regarding the applicant's grounds of inadmissibility, the record establishes that the applicant attempted to procure entry to the United States in September 2001 by presenting a fraudulent passport. Thereafter, the applicant was paroled into the United States to apply for asylum. On August 21, 2002, the applicant was ordered removed and arrangements were made for the applicant to depart the United States on November 12, 2002; he did not depart until September 2004. The officer in charge correctly found the applicant to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Act, for having attempted to procure entry to the United States by fraud and/or willful misrepresentation, and under section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for more than one year. The applicant does not contest the officer in charge's findings of inadmissibility.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is

diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

Sections 212(i) and 212(a)(9)(B)(v) of the Act provide that a waiver is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's spouse, a U.S. citizen, is the only qualifying relative, and hardship to the applicant and/or the applicant's spouse's relatives cannot be considered, except as it may affect the applicant's spouse.

The applicant's U.S. citizen spouse asserts that she is unable to remain in the United States while the applicant resides abroad due to his inadmissibility. She asserts that "[a]lthough I am a U.S. Citizen, I am currently living with [redacted] [the applicant] in Albania. I feel that I had no other choice because it was extremely hard for me to be separated from my husband [the applicant]...." *Affidavit of [redacted]* dated March 2, 2007. No documentation has been provided by counsel, the applicant and/or his spouse outlining the specific hardships the applicant's spouse would face were she to reside in the United States while the applicant remains abroad due to his inadmissibility. Moreover, the record establishes that the applicant's spouse has an extensive family support network, including her parents, sibling, grandparents, uncles, aunts and cousins; no evidence has been provided to establish that they are unable to assist her should the need arise. Finally, it has not been established that the applicant's spouse is unable to travel to Albania, her native country, on a regular basis, to visit the applicant. 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)).

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that although the applicant's spouse may need to make alternate arrangements with respect to her care due to the applicant's inadmissibility, it has not been established that such arrangements would cause the applicant's spouse extreme hardship.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. The applicant's U.S. citizen spouse asserts that she will suffer emotional, psychological and financial hardship were she to reside in Albania with the applicant due to his inadmissibility. She notes that due to her relocation to Albania, she is experiencing anxiety and depression, as she feels like an outcast in Albania and moreover, is separated from her close-knit family, which consists of her parents, a sibling, grandparents, aunts, uncles and cousins. Moreover, she asserts that she wants to start a family with the applicant but they are afraid to raise a child in Albania as she and/or their child may be a target for kidnapping or human trafficking. In addition, she contends that although she obtained a college degree from the United States, she has been unable to obtain gainful employment in her area of expertise in Albania and has a student loan balance of over \$13,000 that she is unable to repay due to the problematic employment situation in Albania. *Supra* at 1-4.

To support the emotional hardship referenced by the applicant's spouse, an evaluation has been provided by [REDACTED], which states that the applicant's spouse suffers anxiety due to her husband's inadmissibility and has been advised to participate in psychotherapeutic sessions. *Psychological Evaluation and Translation of [REDACTED] Psychiatric Services, Hospital Center University of Tirana*, dated February 21, 2007.

With respect to the emotional hardship referenced above, although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation appears to be based on a single interview between the applicant's spouse and the psychologist, conducted more than two years after the applicant departed the United States. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

In addition, it has not been established that the applicant's spouse's family would be unable to travel to Albania to visit the applicant's spouse and/or that the applicant's spouse would be unable to return to the United States regularly to visit her family. As for the applicant's spouse's concerns regarding kidnapping and human trafficking in Albania, the documentation provided by counsel is general in nature and does not specifically establish that the applicant's spouse, a native of Albania, would suffer extreme hardship were she to reside in Albania.

As for the financial hardship referenced by the applicant's spouse, the AAO notes that courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.").

No documentation has been provided that outlines the applicant and his spouse's current financial situation, including income, expenses, assets and liabilities, and their needs, to establish that the applicant's spouse would experience extreme financial hardship were she to reside in Albania with the applicant. The AAO notes that both the applicant and his spouse have been able to secure gainful employment in Albania. It has thus not been established that the applicant's spouse's working/living conditions are such that she is experiencing extreme hardship. As such, the AAO finds that the applicant has failed to establish that his U.S. citizen spouse would experience extreme emotional, psychological and/or financial hardship were she to reside in Albania with the applicant due to his inadmissibility.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. The record demonstrates that the applicant's spouse will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

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