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U.S. Department of Homeland Security
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Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

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[REDACTED]

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FILE:

[REDACTED]

Office: VIENNA, AUSTRIA

Date:

MAR 06 2009

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver 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 sustained.

The record reflects that the applicant is a native and citizen of Albania 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 having entered the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and child in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly. *Decision of the Officer in Charge*, dated September 17, 2008.

On appeal, counsel contends that the applicant's wife has established extreme hardship and that the officer in charge abused her discretion in denying the waiver application.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating they were married on November 15, 2002; a letter from the couple's child's school; several letters from ; a letter from the owner of a painting company that promises to employ the applicant; two letters of support from the applicant's church; medical records documenting 's epilepsy; copies of bills and other financial documents; numerous articles addressing epilepsy; letters of support from 's aunt, two sisters, and a friend; copies of the birth certificates of and the couple's child; a copy of an evaluation from the Early Childhood Developmental Delay Program for the couple's child; numerous articles addressing autism; a letter from Macomb Community College confirming 's enrollment; a copy of 's Job Assignment documenting her full-time employment as a cashier; a copy of Ms. 's apartment lease; a psychiatric evaluation for a copy of 's student loans; several documents addressing the country conditions in Albania; and a letter from the applicant. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

Section 212(i) provides:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien.

The record shows, and the applicant admits, that he entered the United States using a fraudulent passport in July 2000. *Record of Sworn Statement*, signed by [REDACTED] on May 26, 2005. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by fraud or willful misrepresentation.

A section 212(i) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. 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-Morales*, 21 I&N Dec. 296 (BIA 1996).

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. *See 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 pursuant to section 212(i) of the Act. These factors include: 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 has held:

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.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted). In addition, the Court of Appeals for the Ninth Circuit has held that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and, “[w]hen the BIA fails to give

considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted).

The record reflects that the applicant and his wife, [REDACTED], married on November 15, 2002. [REDACTED] parents, grandmother, six siblings, aunts, uncles, and cousins all live in the United States and she has no family in Albania. *Letter from [REDACTED]* undated. The record also shows that [REDACTED] attends school as a nursing student and has worked full-time as a cashier for the past nine years. The record shows that her full-time salary is approximately \$1,415 per month and that when the applicant was in the United States, he was the primary caretaker of the couple’s child. Since the applicant’s departure from the United States, [REDACTED] pays \$300 per month in day care expenses in order to continue working full-time. In addition, [REDACTED] has had epilepsy since she was three years old and takes several medications on a daily basis in an effort to control her seizures. Furthermore, a psychological evaluation in the record diagnosed [REDACTED] as having Major Depressive Disorder, including having recurrent thoughts of death. *Affidavit of [REDACTED]* dated February 12, 2008. [REDACTED] states in her appeal that “[s]ometimes I feel like killing myself from the stress I have.” *Letter from [REDACTED]* dated January 19, 2009.

The record further shows that the couple’s four-year old son, [REDACTED], has speech and developmental problems. [REDACTED] attends an early childhood special education program and requires “moderate to maximal support to address his social-communication deficits.” *Letter from [REDACTED]*, dated January 7, 2009. A developmental delay evaluation in the record shows that when [REDACTED] was assessed at the age of three years and eleven months, his auditory comprehension was deemed “significantly below average,” and he was compared to having the comprehension skills of a child who was one year and one month old. *Early Childhood Developmental Delay Program, Initial Report*, dated March 30, 2008 (showing a “total language score” of a one year and five months old child). He did not speak in full sentences, uttering one or two words at a time, and his speech was often unintelligible. *Id.* (concluding that “talking and other forms of expression will be very difficult to extremely difficult for him”). In addition, the evaluation indicated other problems for [REDACTED] including findings that eating, dressing, and tasks involving “home maintenance” will be very difficult to extremely difficult for him. *Id.* Furthermore, [REDACTED] avoided eye contact, did not always respond when spoken to, refused to play active games, was unresponsive to affection, and showed little interest in things around him, leading to the conclusion that he may have Autism or Asperger’s Syndrome. *Id.* The special education program [REDACTED] currently attends provides him with a smaller classroom size, access to multiple support services, and augmentative communication technology to assist with his communication difficulties. *Id.*

Upon a complete review of the record evidence, the AAO finds that the applicant has established that his wife will experience extreme hardship if his waiver application is denied.

In this case, the physical hardship, combined with the economic, personal, and emotional hardship that would result from the denial of a waiver of inadmissibility constitute extreme hardship. It is evident from the record that [REDACTED] has suffered extreme financial hardship since her husband's departure from the United States. Although the applicant was not working outside the home and was [REDACTED] primary caretaker when he was in the United States, [REDACTED] now pays \$300 per month for day care because her husband is no longer in the country. *Letter from* [REDACTED] dated April 10, 2008; *Letter from* [REDACTED] undated; *Letter from* [REDACTED] undated. The record shows [REDACTED] earns approximately \$1,415 per month as a full-time cashier and that her medications cost her approximately \$165 per month, her rent costs \$876 per month, and day care costs \$300 per month. *Letter from* [REDACTED] undated; *Letter from* [REDACTED] undated. Since the applicant's departure from the United States, [REDACTED] has been unable to pay for all of her and her son's living expenses, and her father has been assisting her financially. *Letter from* [REDACTED] undated; *Letter from* [REDACTED] undated. The applicant has been offered a job upon returning to the United States and will, therefore, be able to assist the applicant financially. *Letter from* [REDACTED] *Owner of* [REDACTED] dated January 13, 2009 ("I will never forget how [the applicant] always asked me for a job saying he will work for free until he learned the job. I promised him that when he gets his papers, I will give him a job on the spot. And I will stay true to my word . . . when [the applicant] returns from Albania. . .").

In addition, the record indicates that [REDACTED] is depressed and possibly suicidal. Her statement that "[s]ometimes I feel like killing myself from the stress I have," *Letter from* [REDACTED] dated January 19, 2009, is substantiated by the psychological evaluation in the record which indicates that [REDACTED] has had suicidal thoughts although she had not made any attempts to act on them. *Affidavit of* [REDACTED], dated February 12, 2008. The psychologist diagnosed [REDACTED] as having Major Depressive Disorder, including recurrent thoughts of death. *Id.* Considering Ms. [REDACTED]'s depression and recurring suicidal thoughts, combined with her physical problems with epilepsy as described below, the effect of separation from the applicant on [REDACTED] go above and beyond the experience that is typical to individuals separated as a result of deportation and rises to the level of extreme hardship. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 303 (BIA 1996) (finding extreme hardship to the applicant's wife based on her history of depression and a suicide attempt); *cf. Hernandez-Perez v. Mukasey*, 271 Fed.Appx. 592, 593-94 (9th Cir. 2008) (unpublished) (stating that a "psychiatrist's opinion that [REDACTED]'s mother will 'likely . . . attempt suicide' [if her son is deported] is . . . highly probative of extreme hardship") (emphasis in original).

It would also constitute extreme hardship for [REDACTED] to go to Albania to avoid the hardship of separation from her husband. It is evident from the record that [REDACTED] epilepsy is a significant health problem that is incurable and requires vigilant follow-up care. *Letter from* [REDACTED] [REDACTED], dated January 3, 2008. Documentation in the record from her neurologist, spanning eleven years from 1997 through 2008, indicates that [REDACTED]'s epilepsy has ranged from having seizures four to five times per day to being seizure-free for years. *Compare Office Note*, dated December 6,

2006, with Letter from [REDACTED], dated December 4, 1998. If she moved to Albania, [REDACTED] would lose her health insurance and she would sever the relationship she has built over the years with her doctors, losing the continuity of health care she has received for many years. More importantly, the record shows that she may not be able to access adequate medical care or her prescription medications in Albania. *U.S. Dep't of State, Country Specific Information for Albania*, dated September 20, 2007 ("Medical facilities and capabilities in Albania are limited beyond rudimentary first aid treatment. . . . [P]rescription drugs may be unavailable. . . ."). Moreover, she would be separated from her entire family and has no family ties in Albania. Furthermore, she would lose the special education services her son receives for his speech and developmental problems. Given the medical issues [REDACTED] and her son have, the hardship [REDACTED] would experience if her husband were refused admission is extreme, going well beyond those hardships ordinarily associated with deportation. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case includes the applicant's entry into the United States using a fraudulent passport. The favorable and mitigating factors in the present case include: the applicant has significant family ties to the United States, including his U.S. citizen wife and son; the extreme hardship to the applicant's wife if he were refused admission, particularly in light of his wife's medical and mental health conditions; the letter of support and an offer of employment from the owner of a painting company; two letters of support from the applicant's church stating that the applicant actively volunteered in church activities and assisted with fundraising; the letter of support from [REDACTED] aunt describing the applicant as a "wonderful family man and a hard worker who provides for his family;" and the applicant's lack of any criminal convictions.

The AAO finds that, although the applicant's immigration violation is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.