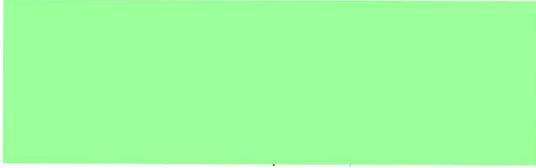


(b)(6)

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



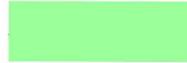
U.S. Citizenship
and Immigration
Services



Date: APR 17 2013

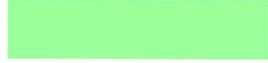
Office: VIENNA

FILE:



IN RE:

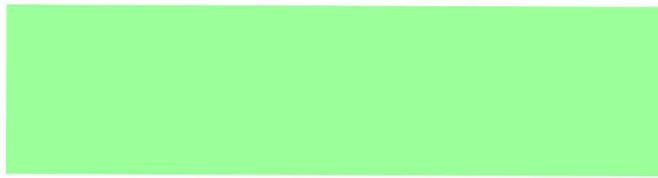
Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Vienna, Austria. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO) on December 5, 2011. The matter is now before the AAO on motion. The motion will be granted and the underlying application approved.

The applicant is a native and citizen of Albania who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The applicant is married to a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her U.S. citizen spouse.

In a decision dated June 18, 2009, the officer in charge concluded that the applicant failed to demonstrate that her U.S. citizen spouse would suffer extreme hardship as a result of his inadmissibility to the United States and denied the waiver application accordingly. In a decision dated December 5, 2011, the AAO found that the record evidence established the applicant's spouse would experience extreme hardship resulting from separation from the applicant. However, the AAO also found the record evidence insufficient to establish extreme hardship upon relocation to Italy, the country in which the applicant presently resides as a permanent resident. The AAO dismissed the appeal accordingly.

On motion, counsel for the applicant submits new evidence which she contends overcomes the reasons for the dismissal of the applicant's appeal. Counsel argues that the evidence previously submitted on appeal, together with the evidentiary submissions on motion regarding the applicant's spouse's "impossibility to learn Italian [and] sell high-end and technologically intricate luxury watches in Italian, her inability to be permanently separated from her family, and the extreme hardship upon separation," constitute sufficient evidence to demonstrate extreme hardship.

The regulation at 8 C.F.R. § 103.5(a) states, in pertinent part, that:

(a) Motions to reopen or reconsider

.....
(2) Requirements for motion to reopen. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence.

(3) Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) Processing motions in proceedings before the Service. A motion that does not meet applicable requirements shall be dismissed.

The record includes the following new or additional evidence: an additional psychological evaluation concerning the applicant's spouse; a statement prepared by the applicant's spouse; an affidavit by the applicant's mother; joint checking account documentation; pay stubs and earnings statements; various articles regarding the economic and political situation in Italy; and documentation concerning relocation to and employment in Italy.

Here, the AAO finds that the additional evidence meets the requirements of a motion to reopen found in 8 C.F.R. § 103.5(a)(2). The evidence points to new facts not previously addressed, which are supported by documentary evidence.

The record reflects that the applicant was convicted on March 12, 1999 of resisting a public official, committing personal injury, receiving stolen property, and money laundering. On June 28, 2000, the [REDACTED] entered an irrevocable sentence for these crimes against the applicant. The applicant was sentenced to four years imprisonment and was deported from Italy for these crimes. The Officer in Charge found the applicant inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The applicant did not contest inadmissibility on appeal, and she has not contested her inadmissibility on motion. Accordingly, the AAO will not disturb the previous finding that the applicant is inadmissible to the United States for having committed crimes involving moral turpitude.

As discussed in the AAO's dismissal of the applicant's appeal, his eligibility for a waiver under section 212(h) is first dependent on a showing that the bar to his inadmissibility would impose extreme hardship on a qualifying relative. The applicant's U.S. citizen spouse is the qualifying relative in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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 the unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage; loss of current employment; inability to maintain one's present standard of living; inability to pursue a chosen profession; separation from family members; severing community ties; cultural readjustment after living in the

United States for many years; cultural adjustment of qualifying relatives who have never lived outside the United States; inferior economic and educational opportunities in the foreign country; or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “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.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, *et cetera*, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant is not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The AAO now turns to a consideration of the additional evidence submitted to establish that the applicant’s wife would suffer extreme hardship if the applicant’s waiver application is denied.

In our decision dated December 5, 2011, the AAO found that extreme hardship had been established to the applicant’s wife in the scenario of separation from the applicant. On motion, we consider only whether the record evidence establishes that the applicant’s spouse will experience extreme hardship upon relocation to Italy, the country in which the applicant presently resides as a permanent resident.

Regarding whether the applicant’s wife would suffer extreme hardship if she relocated abroad, the AAO, in its decision dated December 5, 2011, concluded that extreme hardship had not been established. Specifically, the AAO noted that most of the country conditions submitted focused on Albania, while it appeared that the applicant resides in Italy, where he holds permanent resident status. The AAO further noted that the record evidence did not establish that the applicant’s spouse would experience extreme hardship as a result of relocating to Italy.

On motion, counsel for the applicant asserts that the record evidence shows that the applicant's wife has been unable to learn a new language, that the applicant's wife is extremely close to her immediate family in the United States as demonstrated by the submitted affidavits, and that relocation would disrupt the mental health treatment the applicant has been receiving from licensed clinical social worker [REDACTED] who has evaluated her since 2008.

The record reflects that the applicant's wife was born and raised in the United States. She has resided in the United States for over 28 years, suggesting relocation would require significant adjustment. The applicant's spouse would have to leave her community; her employment of over eight years selling specialized luxury watches; the psychologists and social workers familiar with her depression, anxiety, and treatment; and her family, including her parents, grandmothers, and brothers. The record evidence further reflects that the applicant's spouse would experience constant concern over the health and safety of her grandmothers and parents, with whom she shared a house for most of her life. The applicant's concern about her immediate family's health is related to the recent loss of her grandfather and her feelings of helplessness and anxiety, which are well documented in the two psychological evaluations prepared by [REDACTED] and the five evaluations prepared by licensed clinical social worker [REDACTED]. The applicant's spouse indicates in her affidavit dated December 29, 2011, that she is extremely close to her parents and that she has resided continuously with them since 2009. The applicant's spouse further indicates that her husband's immigration situation worries her, that she would be unable to visit her immediate family in the United States if she could not secure employment in Italy, and that relocation to Italy would result in the loss of the daily emotional support she receives from her parents. Here, the AAO acknowledges that the applicant's spouse was born and raised in the United States and her parents and elderly grandmothers live close by.

The applicant indicates that she does not speak Italian or Albanian, and that relocation would result in extreme hardship because she would be unable to communicate in the country of relocation. The record reflects, and the AAO noted on a previous appeal, that the applicant was diagnosed with Attention Deficit Disorder (ADD) at an early age and that this condition has prevented her from learning new languages. The record includes documentation indicating that because of her condition, her high school foreign language course requirement was waived. In her affidavit, the applicant addresses the difficulties she encountered trying to communicate with her grandparents in the Italian language. She indicates that growing up, she always asked her grandparents to speak to her in English, as she was unable to understand Italian. She further mentions that, whenever she travels to Italy to visit her husband, she feels secluded and finds it impossible to travel around the city by herself because it is extremely difficult to communicate in that language. She indicates that minor tasks such as ordering coffee or communicating with the applicant's parents and family members become especially challenging. Because of her inability to communicate in Italian, she often feels isolated and depressed in that country. The applicant's spouse asserts that her inability to speak Italian will severely affect her employment prospects, as she has pursued a career with specialized and highly technical terminology.

The applicant's wife asserts that she will be unable to secure employment in the Italian household goods market because of her inability to speak the language. On motion, counsel has submitted country conditions documentation concerning Italy's labor market. The documentation reflects that

securing employment in Italy is difficult because the unemployment rate is high. Additionally, the documentation reflects that potential employers seek individuals with advanced degrees when hiring. With regards to educational opportunities, the record reflects that the main language of instruction at Italian universities is Italian, and foreigners interested in studying there need to demonstrate basic Italian skills to be admitted to most classes. Consequently, record evidence shows that the applicant will likely need to show evidence of an advanced degree to secure employment in Italy, and her language learning disabilities will likely complicate any further educational plans. Importantly, the documentation reflects that in most cases, job applicants will be required to speak fluent Italian.

Documentation in the record indicates that Italy has been experiencing sluggish economic growth with a high unemployment rate. Further, it indicates that foreigners' chances of making a decent living in Italy from an earned income are low. Additionally, the record evidence reflects that individuals who are not European citizens need an employer in Italy to sponsor their work visa: to be able to hire a non-European foreigner, a company needs to show that no Italian or European applicant has the same job qualifications.

It is evident from the record that, were the applicant and his wife to relocate to Italy, the latter would have to abandon her stable employment of eight years as a sales associate at a luxury jewelry store to join her unemployed husband. The presented evidence regarding the labor market in Italy demonstrates that the applicant's wife will most likely face difficulty in finding employment abroad. The likelihood of her learning this language is diminished given her documented disability. Additionally, as her current profession requires an expertise in highly technical terminology, it is probable that she would be unable to practice this profession in Italy due to language barriers. Furthermore, the applicant would likely be unable to continue making payments on her student loan obligations. Therefore, the circumstances presented in this case show that the applicant's wife would likely experience financial hardship upon relocation to Italy, and that without stable employment both the applicant and his spouse would be unable to provide for their household.

A review of the documentation in the record reflects that the deficiencies identified by the AAO in its December 5, 2011, decision have been corrected on motion by the submission of additional documentary evidence outlining the factors and difficulties that, when considered in the aggregate, lead to a finding of extreme hardship. Accordingly, the record evidence, when considered in its totality, reflects that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Italy to reside with the applicant. The AAO therefore finds that the situation presented in this application rises to the level of extreme hardship.

However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on discretion and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness,

and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300.

The favorable factors in this matter are the extreme hardship the applicant's wife would face if the applicant were to reside in Italy, regardless of whether she accompanied the applicant or stayed in the United States; the applicant's apparent lack of a criminal record since 1998; evidence of rehabilitation; and support letters from the applicant's spouse's family. The unfavorable factor in this matter is the applicant's criminal conviction.

It is noted that the crimes committed by the applicant in 1998 which resulted in his conviction in 2000 are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary of Homeland Security's discretion is warranted.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has sustained that burden. Accordingly, the motion to reopen will be granted and the waiver application will be approved.

ORDER: The motion to reopen is granted, and the waiver application is approved.