

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

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



tt5

FILE: [REDACTED] Office: VIENNA, AUSTRIA Date: **AUG 02 2010**

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)

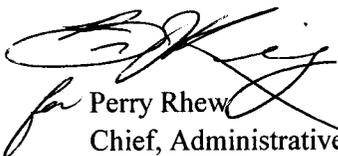
ON BEHALF OF APPLICANT: SELF-REPRESENTED

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew
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 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 procuring admission to the United States by presenting a fraudulent passport belonging to another individual. The record indicates that the applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his United States citizen wife.

The Officer-in-Charge (OIC) found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601), accordingly. *Decision of the Officer-in-Charge*, dated July 19, 2007.

On appeal, the applicant asserts that his wife needs him in the United States and that his wife will suffer extreme hardship if his waiver request is denied. *Form I-290B*, dated July 25, 2007.

The record includes, but is not limited to, several statements from the applicant's wife, a statement from the applicant, copies of the applicant's wife's medical records, letters from the applicant's wife's physicians, a copy of a letter from Social Security Administration dated July 25, 2007, indicating the amount of disability benefit paid to the applicant's wife in 2006, a copy of a car insurance policy for part of 2005, and a copy of an apartment lease contract. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

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

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien...

In the present case, the record indicates that on August 17, 2001, the applicant entered the United States by presenting a fraudulent passport belonging to another individual. On April 23, 2002, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589). On May 14, 2003, the immigration judge denied the applicant's Form I-589 and granted him voluntary departure. The applicant appealed the decision. On April 2, 2004, the applicant married his wife, a citizen of the United States, in Jacksonville, Florida. On June 2, 2004, the applicant's wife filed a Form I-130 on the applicant's behalf. The Form I-130 was approved on February 10, 2006. The applicant's Form I-589 appeal was denied and he subsequently departed the United States on May 15, 2005. On December 12, 2006, the applicant filed an Application for Permission to Reapply for Admission into the United States after Deportation (Form I-212), and on January 4, 2007, the applicant filed a Form I-601. On July 18, 2007, the OIC denied the Form I-212 and Form I-601, finding that the applicant had entered the United States by fraud or the willful misrepresentation of a material fact and had failed to demonstrate extreme hardship to his spouse.

Based on the applicant's use of another person's passport to enter the United States, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C) of the Act.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 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 *Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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 has also 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).

U. S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“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). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Only “in cases of great actual or prospective injury...will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In her various statements, the applicant’s wife states that she is suffering extreme hardships as a result of separation from the applicant in the form of financial and emotional hardship. As to financial hardship, the applicant’s wife states that the applicant worked and provided for her financially because she cannot work due to her illness. The applicant’s wife also states that as a result of separation from the applicant, she lost the financial support from the applicant, lost her home and is now living with relatives. The applicant’s wife further states that the money she is receiving from the Social Security Administration (SSA) due to her disability is insufficient for her to meet all her financial obligations. The record contains a letter from the SSA dated July 25, 2007, indicating that the applicant received \$9,600 in the year 2006. The record also contains a letter from [REDACTED] dated July 27, 2007, who identified himself as the applicant’s wife’s brother stating that the applicant’s wife lives with him and she pays \$200 a month towards rent.

As to emotional hardship, the applicant’s wife states that she has various medical problems and needs the applicant to help her deal with her conditions, which includes driving her to her doctors for appointments, taking her wherever she wants to go, and being there for her when she has difficulties. The applicant’s wife also states that the applicant takes care of her, makes sure that she has something to eat and keeps her company so that she will not be alone. The applicant’s wife states that she is lonely as a result of the applicant’s absence. The applicant states that he needs to be with his wife in the United States because she is sick and needs his help. The applicant states that he provides dinner for his wife sometimes so that she does not have to cook, drives her to places and keeps her company so that she will not be lonely. *See Statement by Spiro Bregu*, dated July 31, 2001. The applicant also states that he needs to be in the United States with his wife because she is worried about money and where to live. *Id.*

The record includes copies of the applicant's wife's medical records, a letter from [REDACTED] of Five Points Medical Center in Asheboro, North Carolina, dated July 24, 2007, and a letter from Behavioral Associates of Asheboro, North Carolina, dated July 30, 2007. Also in the record is a copy of a letter from the SSA dated July 25, 2007, indicating that the applicant's wife received monthly disability benefits and was paid about \$9,200 in 2006, and copies of her Medicare and Medicaid insurance cards.

While the AAO acknowledges that the applicant's wife is experiencing hardship, the record fails, however, to demonstrate that all the hardships described by the applicant's wife are the result of the applicant's inadmissibility. For instance, the applicant's wife states that the applicant provided financial support to her, but the record lacks evidence detailing the applicant's employment, the amount of his financial contributions, and the family's expenses. The applicant's wife also does not address the applicant's current financial circumstances in Albania, and whether he is able to contribute to his family's financial well being from his location outside the United States. As to emotional hardship, the record contains medical records and letters from healthcare professionals indicating the medical problems the applicant's wife has. The medical records are insufficient to establish that the applicant's wife's medical conditions are as a result of the applicant's inadmissibility. For instance, the letter from [REDACTED] states that the applicant's wife has been a patient at the clinic since November 14, 2006, and her diagnoses include fibromyalgia, depression and anxiety disorder. [REDACTED] did not indicate the causes of the applicant's wife's medical problems. The letter from Behavioral Associates of Asheboro states that the applicant's wife is receiving individual psychotherapy for help in dealing with many stressors in her life, and that her diagnoses include severe depression with anxiety and post traumatic stress disorder and situational adjustment disorder. The letter does not provide a list of the stressors. The brief letters noted above do not provide detailed assessment of the severity of the applicant's wife's conditions, information on treatment provided or any family assistance needed. Without such details, the AAO is not in the position to reach conclusions concerning the severity of any medical condition or the treatment needed.

Regarding relocation, the applicant's wife states that she cannot live in Albania because of her medical problems and must see her doctors in the United States every three months. The applicant's wife states that she was in Albania with the applicant for about three months and was so severely ill that she had to be hospitalized when she came back to the United States. While the AAO acknowledges the claims by the applicant's wife, it does not find evidence in the record to support them. The record does not contain country condition reports on Albania to demonstrate that the applicant's wife would be unable to receive medical treatment for her conditions in Albania. The applicant's wife does not address any family ties she may have in Albania that will help her adjust to life there. Additionally, the AAO notes that other than the statement from the applicant's wife, the record does not include any evidence of financial or other types of hardships that the applicant's wife would experience if she relocated to Albania with the applicant. Accordingly, the AAO does not find the record before it to demonstrate that the applicant's wife would suffer extreme hardship upon relocation to Albania.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(i) of the Act. As the

applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining 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. 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.