

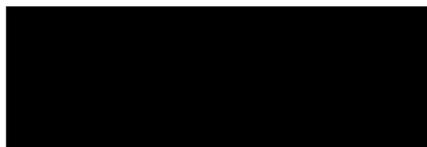
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship
and Immigration
Services

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H5 H2

FILE: [REDACTED]

Office: VIENNA

Date:

FEB 18 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:

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).

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 applicant is a native and citizen of Albania 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 to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to enter the United States and reside with his U.S. citizen wife.

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated March 28, 2007.

On appeal, the applicant's wife contends that she is experiencing hardship due to separation from the applicant. *Statement from the Applicant's Wife*, dated April 19, 2007.

The record contains statements from the applicant and the applicant's wife; a letter from the applicant's prior employer in the United States; copies of the applicant's and his wife's passports; a copy of a birth record for the applicant; documentation in connection with the applicant's proceedings in Immigration Court and before the Board of Immigration Appeals, including evidence and testimony the applicant provided to support his application for asylum, and; documentation relating to the applicant's attempted entry to the United States using a passport with his photograph substituted for that of the true owner. The entire record was reviewed and considered in rendering this decision.

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

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) of the Act provides, in pertinent part, 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 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 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[.]

The record shows that on July 4, 2001 the applicant attempted to enter the United States using a passport with his photograph substituted for that of the true owner. Thus, he attempted to enter the United States by fraud and misrepresenting a material fact (his true identity.) Accordingly, he was

deemed inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest his inadmissibility on appeal.

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 the applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's wife. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. These 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.

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).

On appeal the applicant's wife contends that she is experiencing hardship due to separation from the applicant. *Statement from the Applicant's Wife* at 1. She notes that she and the applicant have a well-established life in the United States including an apartment and her satisfactory employment. *Id.* She explains that she is suffering from deep depression for which she takes medication and visits a doctor regularly. *Id.* She states that her doctor told her she is encountering depression because she feels alone. *Id.* She expresses that she and the applicant share a close bond, and that they have the same interests and thoughts. *Id.*

The applicant's wife indicates that she is enduring economic hardship due to the cost of telephone bills and trips to Albania every year. *Id.*

The applicant stated that his wife suffers from nervous depression and that she needs his financial and emotional help. *Statement from the Applicant*, dated September 18, 2006.

The applicant provided a statement from his wife's physician, [REDACTED] provided that the applicant's wife is suffering from severe depression, and that "if she were to have visiting time with [the applicant] her depression would be alleviated." *Statement from* [REDACTED] dated September 14, 2006.

Upon review, the applicant has not established that his wife will experience extreme hardship if he is prohibited from entering the United States. The applicant has not asserted or shown that his wife will experience extreme hardship should she join him in Albania. The AAO has examined the evidence in the record submitted by the applicant in prior proceedings, yet at no point has the applicant asserted that his wife would encounter difficulty in Albania. The applicant's wife indicates that she has visited Albania annually, yet she does not describe any hardship she experienced in the country. It is noted that [REDACTED] asserted that the applicant's wife's depression would be alleviated by visiting with the applicant, and the applicant's wife would not face separation from the applicant should she join him in Albania.

In the absence of clear assertions from the applicant, the AAO may not speculate regarding the hardships his wife may experience should she relocate abroad. In proceedings regarding a waiver of grounds of inadmissibility under section 212(i)(1) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Based on the foregoing, the applicant has not shown that his wife would experience extreme hardship in Albania.

The applicant has not shown that his wife would experience extreme hardship should she remain in the United States without him. The applicant's wife expresses that she is experiencing emotional hardship due to separation from the applicant. She explains that she is suffering from depression for which she sees a doctor and takes medication. The applicant provided a brief letter from [REDACTED] yet the record contains no other evidence to support that the applicant's wife receives regular treatment for mental health issues, or that she has been prescribed medication. [REDACTED] did not describe the applicant's wife's treatment or discuss the severity of her condition. The AAO acknowledges that family separation is often difficult and causes substantial emotional consequences. Yet, the applicant has not shown by a preponderance of the evidence that his wife is encountering mental health problems that can be distinguished from the psychological hardship commonly experienced by spouses when they are separated due to inadmissibility.

Federal court and administrative decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

The applicant's wife contends that she is enduring economic hardship due to the applicant's absence, in part due to her telephone bills and the cost of travel to Albania to visit him. However, the applicant has not submitted evidence of his wife's communication or travel charges. Nor has he stated or shown his wife's income or regular expenses such that the AAO can assess whether she is experiencing financial challenges. The applicant has not indicated whether he works in Albania, or whether he or his wife have other sources of income. Thus, the applicant has not provided sufficient

documentation to show that his wife in encountering significant financial hardship due to his absence.

Based on the foregoing, the applicant has not shown that his wife will experience extreme hardship should she remain in the United States without him or relocate to Albania with him.

All stated elements of hardship to the applicant's wife have been considered in aggregate. The applicant has not established that denial of the present waiver application "would result in extreme hardship" to his wife, as required for a waiver pursuant to section 212(i)(1) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

As noted above, in proceedings regarding a waiver of grounds of inadmissibility under section 212(i)(1) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.