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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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HS

FILE:

Office: VIENNA

Date:

MAR 09 2010

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).

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, 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 procured 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 her U.S. citizen spouse and children, born in 1999 and 2002.

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 July 24, 2007.

In support of the appeal, the applicant submits the following: a statement, dated August 6, 2007; an affidavit from the applicant's spouse, dated August 13, 2007; and copies of airline tickets purchased for travel to Albania. In addition, supplemental documentation in support of the instant appeal was received by the AAO in 2008 and 2009. 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 procured entry to the United States by presenting a fraudulent passport. The applicant subsequently applied for asylum; her request for asylum was denied in May 2003 and she was ordered removed. *See Order of the Immigration Judge*, dated May 12, 2003. The applicant appealed the decision and said appeal was dismissed in September 2004. *See Order*, date September 9, 2004. The applicant did not depart the United States until January 2007. 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 procured 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 their children cannot be considered, except as it may affect the applicant's spouse.

The applicant's U.S. citizen spouse asserts that he will suffer emotional and financial hardship were he to reside in the United States while the applicant remains abroad due to her inadmissibility. In a declaration he states that he would suffer extreme emotional hardship due to long-term separation from his spouse and their children, who have accompanied the applicant to Albania for long periods of time. The applicant's spouse further notes that his spouse and children are suffering while in Albania, due to medical incapacity, the high cost of medical care, lack of electricity and heat, and the inability to obtain potable water, which in turn is causing him extreme hardship. In addition, the applicant's spouse contends that he will suffer financial hardship, as he is maintaining two households, one in the United States and one in Albania. He states that the constant trips to Albania are becoming cost-prohibitive, as his leaves are unpaid. *Affidavit of* [REDACTED] dated August 13, 2007.

In support of the emotional hardship referenced, a psychological evaluation has been provided from [REDACTED]. Dr. [REDACTED] notes that the applicant's spouse is depressed and is experiencing suicidal ideation. [REDACTED] concludes that the applicant's spouse's mental health will decline further if he is not reunited with the applicant. *Evaluation from* [REDACTED], dated March 15, 2008.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health

professional and the applicant's spouse or any treatment plan for the depression referenced by [REDACTED] to further support the gravity of the situation. 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 [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

In addition, no documentation has been provided establishing the specific hardships the applicant's children are experiencing due to their mother's inadmissibility, while in Albania or while in the United States<sup>1</sup>, to establish extreme hardship to the applicant's spouse, the only qualifying relative in this case. The AAO notes that a recent teacher evaluation submitted by counsel contends that [REDACTED] the applicant's eldest child, is doing well in school; his school performance has not declined, as counsel asserts.<sup>2</sup> *Letter from [REDACTED]* dated April 8, 2009 and *Report to Families*, September 08 to June 09. Moreover, although the applicant's spouse references the problematic living conditions for his spouse and children while in Albania, the AAO notes that 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)).

The AAO recognizes that the applicant's spouse will endure emotional hardship as a result of separation from the applicant. However, his situation, if he 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. U.S. court decisions have repeatedly held that the common results of removal 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.

As for the financial hardship referenced, the record establishes that the applicant's spouse is gainfully employed for a construction company. *Supra* at 4. Counsel has not provided any documentation that outlines the applicant's and her spouse's current financial situation, including

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<sup>1</sup> The record indicates that although [REDACTED] the applicant's eldest child, resided in Albania with his mother and sibling for long-term periods, [REDACTED] has since returned to the United States to reside with his father and resume his education in the United States. *Statement of [REDACTED]* dated August 6, 2007.

<sup>2</sup> Since resuming his education in the United States, the AAO notes the following assessment as noted in a report provided by counsel with respect to [REDACTED] academics: [REDACTED] [the applicant's child] is a good boy, and I have noticed a great improvement in his behavior, his desire to follow rules, participate in class, and attend to his class work! I am proud of him for this!" *Report to Families*, September 08 to June 09.

income, expenses, assets and liabilities, and their financial needs, to establish that without the applicant's presence in the United States, her spouse's financial hardship would be extreme. Nor has it been established that the applicant's extended leaves without pay to visit the applicant in Albania are causing him extreme financial and/or professional hardship. Moreover, no documentation has been provided to establish that the applicant is unable to obtain gainful employment in Albania that would allow her to assist her spouse in the United States financially should the need arise. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship. As such, the record fails to establish that the applicant's spouse's continued emotional and financial survival directly correlate to the applicant's physical presence in the United States.

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. With respect to this criteria, the applicant asserts that her children are suffering medical hardship in Albania due to medical incapacity and poor hygiene. She notes that health care in Albania is very poor, very expensive and corrupted. *Statement from* [REDACTED] dated August 6, 2007. The applicant's spouse further references the decreased standard of living in Albania. *Supra* at 3-4. Finally, counsel contends that the applicant's spouse has a family network in the United States and relocating to Albania would mean long-term separation from his family. *Supra* at 2.

To begin, it has not been established that the applicant's children are unable to obtain appropriate and affordable medical care in Albania. Although a letter has been provided from the children's pediatrician in the United States, [REDACTED] who asserts that the children should be treated for their chronic ear infections by specialists familiar with their care, it has not been established that being treated by physicians in Albania is causing the children, and by extension, their father, extreme hardship. *Letter from* [REDACTED], dated March 9, 2007. In addition, the record establishes that the applicant's spouse is employed in the construction business; no documentation has been submitted establishing that the applicant and/or his spouse are unable to obtain gainful employment in Albania, thereby offering them the opportunity to maintain their quality of life, enroll their children in solid academic programs and ensure continued medical access and coverage for the applicant's children, and spouse, should the need arise. Finally, it has not been established that the applicant's spouse would be unable to return to the United States regularly to visit his support network of friends and family. As such, it has not been established that the applicant's spouse would suffer extreme hardship were he to relocate to Albania, his home country, to reside with the applicant.

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.