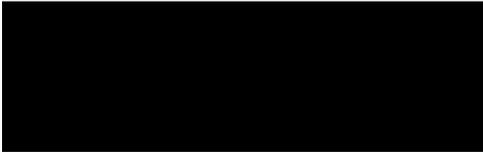




U.S. Citizenship
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Services

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FILE: [REDACTED] Office: NEW YORK, NY

Date: **SEP 13 2010**

IN RE: [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:



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 District Director, New York, New York. The matter 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 having attempted to enter the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a U.S. citizen and the mother of two U.S. citizens. She 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 her family.

The District Director found that the applicant had failed to establish that the bar to her admission would result in extreme hardship for her spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, dated March 4, 2009.

On appeal, counsel for the applicant contends that the District Director failed to consider all of the hardships that would be experienced by the applicant's spouse if her waiver request is denied, specifically those resulting from his medical and psychological conditions. *Form I-290B, Notice of Appeal or Motion*, dated April 2, 2009; *Counsel's brief*, dated April 28, 2009.

In support of the appeal, the record includes, but is not limited to, counsel's brief; statements from the applicant and her spouse; medical statements concerning the applicant's spouse; support letters from friends of the applicant; country conditions information on Albania; earnings statements, W-2 forms and tax returns for the applicant's spouse and documentation previously submitted in support of the applicant's asylum application. The entire record was reviewed and considered in arriving at a decision in this matter.

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

- (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.

Section 212(i) of the Act provides 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 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.

The record reflects that, on December 31, 2000, the applicant entered the United States using a fraudulent Slovenian passport. Accordingly, she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having sought an immigration benefit by the willful misrepresentation of a material fact and must seek a waiver of inadmissibility under section 212(i) of the Act.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals (BIA) stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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 BIA 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 an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The BIA 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 BIA has also held that the common or typical results of deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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 BIA 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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the BIA considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v.*

Arrieta, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. See, e.g., *Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The AAO now turns to the question of whether the applicant in the present case has established that her spouse would experience extreme hardship if he relocates with her to Albania. On appeal, counsel states that the applicant’s spouse is not a native of Albania and that he is physically handicapped as a result of the loss of his right eye. Counsel further states that Albania is a poor country with few job opportunities for a handicapped person and that the applicant’s spouse would not be able to obtain employment there. The applicant’s spouse, counsel contends, would also be ineligible for public health benefits as he is not Albanian and would not be able to obtain proper treatment for his physical handicap or the psychological problems from which he suffers. Counsel states that the loss of the applicant’s spouse’s eye and his mental health problems are the result of the persecution he suffered in the former Yugoslavia.

In a February 20, 2008 affidavit, the applicant’s spouse states that if he and his family relocated to Albania, it would be impossible for his children to survive as they do not speak Albanian. He further asserts that his children would be unable to attend school because there are no bilingual education programs in Albania and that the education that would be available to them is not of the

same quality as that they are receiving in the United States. The applicant's spouse also contends that he has sight in only one eye and that he would have great difficulty in obtaining employment in Albania because of this disability. He states that, because of his disability, safety concerns would preclude him from obtaining employment in the construction industry and that, given his education and background, the only work he would be able to find would be as a manual laborer. The applicant's spouse asserts that he has no family or support system in Albania and, as a result, would have great difficulty in providing for his family. The applicant's spouse also contends that he would be forced to become an Albanian citizen if he relocated.

The record contains an undated statement from [REDACTED] who indicates that he assessed the applicant's spouse's vision on March 30, 2009. [REDACTED] confirms that the applicant's spouse does not have a right eye. He further notes that the applicant's spouse has undergone repeated surgeries as a result of his eye loss and wears a prosthetic eye. [REDACTED] reports that he conducted visual field screening and that the applicant's spouse's vision has peripheral defects. [REDACTED] also reports a suspicious growth on the applicant's spouse's lower left eyelid that requires further evaluation. He recommends that the applicant's spouse's prosthetic eye be evaluated for replacement and that he be evaluated on an annual basis.

The record also includes a March 30, 2009 statement and two medical notes from [REDACTED] that establish that the applicant's spouse suffers from Post Traumatic Stress Disorder (PTSD). [REDACTED] reports that the applicant's spouse initially came to him for an evaluation of his PTSD in 2008. He states that the applicant's spouse's PTSD is the result of the wars that followed the dissolution of the former Yugoslavia in the 1990s and that his symptoms, including nightmares, agoraphobia, flashbacks and panic attacks, had gradually improved after he married the applicant. He notes, however, that the possibility of the applicant's removal has resulted in a partial return of her spouse's symptoms and that it is probable that her removal would lead to a full return of his PTSD, impairing his ability to work and care for their children.

To establish conditions in Albania, the applicant has submitted the section on Albania from Country Reports on Human Rights Practices – 2008, released by the U.S. Department of State on February 25, 2009.

The AAO acknowledges the claims regarding the impact that the loss of the applicant's right eye would have on his ability to relocate to Albania, as well as the assertions made regarding the nation's poverty. We also note the assertion that in Albania the applicant's spouse would not have access to the health care he needs for his disability or his mental health. The record, however, does not support these claims.

While the statement from [REDACTED] establishes that the applicant is missing his right eye and that his peripheral vision is affected, it does not indicate that his missing eye has resulted in a physical disability that would affect his performance in the workplace. Instead, it indicates that his distance visual acuity in his left eye is 20/20 and that, when corrected, his near vision is almost 20/20. Although [REDACTED] notes several issues requiring further assessment, he does not indicate that

the applicant's spouse currently requires any ongoing medical treatment beyond an annual evaluation of his vision. The AAO also notes that the statement and medical notes from [REDACTED] regarding the applicant's PTSD do not address how his condition would be affected if he relocated with the applicant. Accordingly, it does not establish that he would require mental health treatment if he moved to Albania. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980)

The Department of State report submitted for the record offers an overview of the state of human rights in Albania, but fails to serve as evidence of the country's economy, employment practices or health care system. The report includes a brief discussion on the treatment of persons with disabilities and offers a one-sentence statement to the effect that employers, schools, health care providers and other state services sometimes discriminate against persons with disabilities. However, this observation does not establish that the applicant's spouse would be viewed as being disabled in Albania as a result of his missing right eye or that it would prevent him from obtaining employment. The record also notes that the minimum wage in Albania is not sufficient to support a worker and his or her family. While the AAO accepts this finding, no documentation has been submitted to demonstrate that the applicant, who works as a building superintendent/repairman, would be limited to minimum wage employment upon relocation. The report further comments that medical care in Albania is poor, but offers no discussion of the country's health care system beyond this limited observation.

The applicant's spouse has also indicated that relocation to Albania would result in significant hardship for his children as they do not speak Albanian. As previously noted, however, the applicant's children are not qualifying relatives for the purposes of this proceeding and the record fails to establish how any hardship they might suffer in Albania would affect their father, the only qualifying relative. Accordingly, the AAO does not find the record to contain sufficient evidence to establish that relocation to Albania would result in extreme hardship for the applicant's spouse.

The record does, however, demonstrate that the applicant's spouse would experience extreme hardship if her waiver request is denied and he remains in the United States. On appeal, counsel asserts that the applicant's spouse was previously granted asylum in the United States based on the persecution he suffered in the former Yugoslavia and that his trauma resulted in his PTSD. Counsel also states that the applicant's spouse's symptoms have gotten worse as a result of the applicant's potential removal from the United States.

In his February 20, 2008 affidavit, the applicant's spouse states that if the applicant were to return to Albania, she would have to fear for her life because of her past political activities and that he would be constantly afraid for her safety. He also states that if the applicant is removed he would have responsibility for both of their children and that he would have to hire a stranger to care for them while he works. The applicant's spouse asserts that he is an assistant superintendent

responsible for the maintenance and repair of an apartment building and that he must often work at night and on weekends. He states that when he is called to work in the middle of the night on an emergency basis, he will not have anyone to care for his children.

In a subsequent April 2, 2009 statement, the applicant's spouse contends that he has no peripheral vision to his right because of the loss of his right eye and that there are many hazards that he is unable to observe and react to because of his limited vision. He states that the applicant has been instrumental in helping him handle his physical handicap and that, in her absence, he would be afraid that his children would come to harm because his limited vision would prevent him from seeing or reacting to dangers. He states that simply by walking to church with his children he would place them in danger. The applicant's spouse further contends that prior to his marriage, he experienced flashbacks and nightmares from the trauma he experienced in the past and that a lot of the bad feelings he had prior to their marriage have come back now that he may lose her.

As previously discussed, the statement in the record from [REDACTED] provides proof that the applicant's spouse's peripheral vision has been affected by the loss of his right eye. However, nothing in this statement indicates the extent to which the applicant's spouse's ability to function has been impaired as a result of the loss of his eye or that his peripheral vision is so deficient that it would prevent him from being able to care for his children. The AAO also finds the record to lack sufficient evidence to establish that the applicant's spouse's employment requires him to be on duty at all times and, therefore, limits his ability to care for his children.

The record does, however, include the previously discussed statement and medical notes from [REDACTED] that establish the applicant suffers from PTSD and that some of his symptoms have returned as a result of the applicant's potential removal from the United States. The AAO specifically notes [REDACTED] conclusion that the applicant's spouse's removal would probably result in a full return of his PTSD, impairing his ability to work and care for his children. The AAO also acknowledges the applicant's spouse's claim that the applicant would be at risk upon return to Albania and that one of the hardships he would experience if he remained in the United States would be his concerns for her safety. The AAO notes that the applicant's spouse, previously a citizen of the former Yugoslavia, was granted asylum by the United States in 1996 and acknowledges the impact of his own history on his concerns for the applicant.

When the impact of the applicant's removal on her spouse's mental health, the emotional hardship he would suffer as a result of his concerns over her safety in Albania, and the normal hardships created by the separation of a family, including the hardships of being a single parent of two small children, are considered in the aggregate, the applicant is found to have established that her spouse would experience extreme hardship if her waiver request is denied and he remains in the United States.

However, as the record does not also establish extreme hardship to the applicant's spouse upon relocation to Albania, the applicant is not eligible for a waiver under section 212(i) of the Act.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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.