

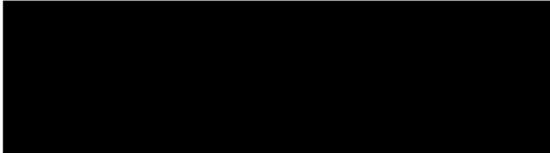
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: VIENNA, AUSTRIA

Date: **JAN 31 2011**

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) and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

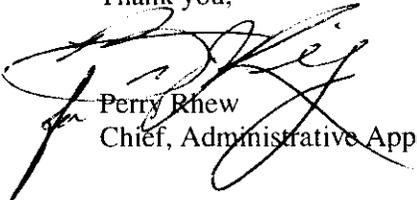
ON BEHALF OF APPLICANT: SELF-REPRESENTED

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 \$630. 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. The decision 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 attempting to procure entry into the United States by fraud or the willful misrepresentation of a material fact and 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 and seeking readmission within ten years of his last departure from the United States. The record indicates that the applicant is married to a United States citizen (USC) 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) and section 212(a)(9)(B)(v) of the Act, in order to reside in the United States with his United States citizen spouse and child.

The Officer-in-Charge (OIC) found 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 September 26, 2008.

On appeal, the applicant's spouse asserts that she and her son have suffered and will continue to suffer extreme emotional and financial hardship if the applicant's waiver application is denied. See *Form I-290B*, dated October 15, 2008, and several accompanying statements from the applicant's spouse.

The record includes, but is not limited to, several statements from the applicant's spouse, supportive letters from family and friends, a copy of an auto insurance renewal statement addressed to the applicant, copies of medical bills from ██████████ Center pertaining to an emergency room visit by the applicant's spouse on September 30, 2008, a copy of the applicant's spouse's credit report from ██████████ credit reporting agency, a letter from ██████████, dated November 4, 2008, pertaining to the applicant's spouse, and a letter from ██████████, a grief counselor, pertaining to the applicant's spouse. The entire record was reviewed and considered in rendering this decision on the appeal.

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 [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....

Section 212(a)(9) of the Act provides in pertinent part:

(B) 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 [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.

In the present case, the record reflects that on May 5, 2001, the applicant attempted to procure entry into the United States by presenting a fraudulent Italian passport belonging to another person. The applicant was refused entry into the United States. The record reflects that on May 13, 2002, the applicant entered the United States without being inspected and admitted or paroled. The record also reflects that the applicant remained in the United States until January 10, 2008, when he voluntarily left the United States. On January 23, 2006, the applicant's United States citizen spouse filed a Form I-130 on the applicant's behalf. On April 19, 2006, the Form I-130 was approved. On January 30, 2008, a Consular Officer in Tirana, Albania, found the applicant inadmissible to the United States under section 212(a)(6)(C)(i) and section 212(a)(9)(B)(i)(II) of the Act. On March 17, 2008, the applicant filed a Form I-601. On September 26, 2008, the Officer-in-Charge denied the Form I-601, finding that the applicant failed to demonstrate extreme hardship to a qualifying relative.

The AAO notes that the applicant does not dispute that he is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) and section 212(a)(9)(B)(i)(II) of the Act. Since the criteria for a waiver of both section 212(i) and section 212(a)(9)(B)(v) are the same, only one hardship analysis is necessary.

A waiver of inadmissibility under section (212)(i) or 212(a)(9)(B)(v) 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 his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 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 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 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 an 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 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 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.*

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 Board 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) (██████████ 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.

In this case, the record reflects that the applicant's spouse [REDACTED] is a 35-year-old citizen of the United States. The applicant and his wife were married in Clearwater, Florida, on September 11, 2003 and they have one child. It appears from the record that the applicant's son is currently residing in the United States with the applicant's spouse. The applicant's spouse asserts that she is suffering extreme emotional and financial hardship as a result of family separation and the denial of the applicant's waiver request.

In her various statements, the applicant's spouse asserts that she needs the applicant back in the United States to help care for their son and help take care of their financial obligations. The applicant's spouse states that the applicant was the primary caretaker of their son while she worked, and that without the applicant here in the United States, she will be forced to find daycare for their son, which will result in financial hardship to her. The applicant's spouse states that it is very difficult for her to work and take care of their son, pay all their bills and send money to the applicant in Albania because she does not make enough money and needs the applicant's financial contributions to make ends meet. The applicant's spouse states that she has bronchitis and painful menstrual periods, which, causes her to miss a lot of time from work, thereby negatively impacting on her income. The applicant's spouse states that after the applicant left for Albania, she had to give up their apartment and move in with her cousin in order to save money. The applicant's spouse also states that she is depressed, that she suffers from lack of sleep and that she has lost weight due to

separation from the applicant, and that she has had to consult a grief counselor to help her deal with the emotional hardship of separation.

The record contains a letter from [REDACTED] dated November 4, 2008, stating that the applicant's spouse is his patient, that she has a history of frequent Bronchitis and heavy bleeding, and that sometimes her bleeding gets so heavy she is unable to work. The letter does not provide information on any medication or other forms of treatment that the applicant's spouse is receiving. The letter also does not provide information on how often the applicant's spouse has to be out of work because of her medical conditions and the impact to her financial situation. The record also contains an undated letter from [REDACTED] stating that he is a grief counselor, that his intent is to help the applicant's spouse deal with the depression she has experienced due to separation from the applicant and her son. [REDACTED] also states that separation from the applicant has caused the applicant's spouse great pain and suffering, that she has lost weight, that she has lost sleep and that she is on the verge of "losing her mind." The letter is not accompanied by any medical records or other documentation to support the diagnoses mentioned in [REDACTED] letter. The AAO notes that the input of any mental health professional is respected and valuable, however, it notes that the letter from [REDACTED] fails to reflect an ongoing relationship with the applicant, or any treatment plan for the conditions he noted on the letter to support the gravity of the situation, thereby rendering the findings speculative and diminishing the evaluation's values to a determination of extreme hardship. The record also contains a copy of the applicant's spouse's credit report, but no copies of actual bills, and no information on the family's income.

While the AAO acknowledges that separation from the applicant may cause some difficulties for his spouse, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the applicant's spouse, considered cumulatively, meet the extreme hardship standard. While the emotional hardship of separation is apparent from the applicant's spouse's statements, the applicant did not provide medical records, detailed testimony, or other evidence to show that the emotional hardships she faces are unusual or beyond what would be expected upon family separation due to one member's inadmissibility. Also, while the applicant's spouse claims financial hardship, the record does not contain documentation regarding the applicant's family income and expenses. Also, the AAO notes that on the Sworn Statement provided by the applicant on May 5, 2001, the applicant stated that he was a police officer in Albania. The applicant's spouse has not established that the applicant is unable to make financial contributions to his family from a location outside the United States. Given the lack of information about the family's finances, the AAO cannot conclude that family separation has caused extreme financial hardship to the applicant's spouse. Accordingly, the applicant has failed to established extreme hardship to his spouse.

Regarding relocation, the applicant's spouse states that she cannot relocate to Albania with the applicant because of the following reasons: she is born and raised in the United States, her entire family resides in the United States, she is close to her family, and she does not speak or understand the Albanian language, and their way of life or culture. The applicant's spouse states that it will be very difficult for her to find a job in Albania and be able to take care of her family financially because she does not understand the Albanian language and way of doing business there.

Additionally, the applicant's spouse states that the place where the applicant lives does not have modern amenities and it will be very difficult for her to adjust to that way of life.

The AAO acknowledges that the applicant's spouse was born in the United States and has significant family ties in the United States, however, it finds that the evidence in the record is insufficient to establish that the applicant's spouse would suffer extreme hardship if she relocates to Albania to live with the applicant. The record does not contain any documentation, such as a country condition report to demonstrate that the applicant's spouse would be unable to find a job and earn enough income to meet their family obligations in Albania. The record reflects that the applicant's son resided with the applicant in Albania for a while and his spouse remained in the United States by herself. There is no evidence in the record to demonstrate that the applicant's son experienced severe problems while he was living in Albania which resulted in extreme hardship to the applicant's spouse. Other than the statement from the applicant's spouse, the record does not contain any medical or documentation to establish any other types of hardship that the applicant's spouse would suffer if she relocates to Albania. Thus, based on the record before it, the AAO finds that the applicant has failed to establish that relocation to Albania would result in extreme hardship to his spouse.

In sum, although the applicant's spouse claims hardships based on family separation, the record does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required for a waiver of inadmissibility under section 212(i) and section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.