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



U.S. Citizenship
and Immigration
Services



#5

DATE: OCT 28 2011

OFFICE: MILWAUKEE, WI

FILE: [REDACTED]

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:



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 Field Office Director, Milwaukee, Wisconsin, 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 Macedonia 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 enter the United States by willfully misrepresenting a material fact. 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 under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director found that the applicant had 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 Field Office Director*, dated March 16, 2009.

On appeal, counsel asserts that United States Citizenship and Immigration Services (USCIS) failed to consider all of the evidence submitted in support of the waiver application and that the applicant has established that his spouse will suffer extreme hardship. *See Form I-290B and attachments.*

The record includes, but is not limited to, a statement from the applicant's spouse detailing the hardship claim; medical evidence pertaining to the applicant's spouse; various documents that relate to the applicant's and his spouse's income including income tax returns, and Wage and Tax Statements; a verification of employment for the applicant and earnings statements; a car loan and credit card statements; country conditions materials on Macedonia; and counsel's brief. 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) 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.

The record reflects that on September 8, 2001 the applicant sought admission to the United States under the Visa Waiver Program by presenting a counterfeit Slovenian passport. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to gain entry to the United States by fraud or the willful misrepresentation of a material fact. The applicant does not dispute this finding.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General, 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 an applicant or other family members 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 USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

On appeal, counsel asserts that the applicant’s spouse will suffer emotional and financial hardship were she to reside in the United States without the applicant. Counsel asserts that there is a “real, honest and close relationship” between the applicant and his spouse. He contends that the applicant’s spouse depends on the applicant for emotional support and that she is suffering depression and extreme anxiety as a result of the applicant’s uncertain fate. Counsel also asserts that the applicant pays all of the family’s bills and that there will be severe consequences if he is removed.

The applicant’s spouse asserts that separation will cause her extreme mental, emotional, financial, and physical hardship on her, and she will be unable to cope with and perform her responsibilities. She states that she loves the applicant and that life without him is unimaginable and would result in extreme anxiety, pain, and depression for her. The applicant’s spouse also contends that the emotional distress, worry, and stress she would suffer without the applicant would trigger severe attacks of depression.

The applicant’s spouse also contends that she would experience extreme financial hardship without the applicant. She states that she does not have a job or income and that she depends on the applicant to provide for the family. She further asserts that she would not be able to meet her financial obligations, including her rent, utilities, car payments and credit card bills and would lose everything.

The record includes an April 22, 2009 report and order from a physician’s assistant at [REDACTED] Family Medicine who found the applicant’s spouse to be suffering from Depression with Anxiety. The order comments that the applicant’s spouse’s depression is “situational with husband’s immigration status,” and the report reflects that the applicant’s spouse was prescribed Trazodone (Desyrel) for insomnia, and was instructed to follow-up with her primary physician, in two to three

weeks regarding her depression. The record also includes a May 1, 2009 Walgreens pharmacy receipt that indicates the applicant's spouse's primary physician has given her a prescription for Sertraline, a medication used to treat depression.

The AAO notes the findings by the physician's assistant that the applicant's spouse is experiencing depression with anxiety as a result of the applicant's immigration situation and the record indicates she has been prescribed medications for depression. Although the input of any health professional is respected and valuable, the brief notes in the report and order written by the physician's assistant do not provide the detailed analysis we require to reach a decision regarding the impact of separation on the applicant's spouse's emotional/mental health. The report fails to describe the nature or severity of the applicant's spouse's depression, or indicate how it is affecting her ability to function as a parent or in the workplace.

The record includes tax returns and W-2 Wage and Tax Statements showing wages of \$27,031 for the year 2007, \$30,261 for 2006, and \$44,444 for 2005; a December 12, 2008 paystub for the applicant indicating \$485.04 in net pay; a car loan statement requesting a \$285.58 monthly payment; and a credit card billing statements showing monthly minimum payments of \$89.00 and \$159.00. It is noted that the monthly lease payment established by the record is for the applicant's prior residence, not his current one; and the record does contain one earnings statement for the applicant's spouse from 2008 which shows part-time employment. We also note that earnings statements for the applicant establish that he has health and dental insurance through his employment.

Without this additional evidence of the applicant's spouse's financial obligations, the AAO is unable to assess the nature and extent of the financial hardship she would experience in the applicant's absence. 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)).

Counsel asserts that the applicant's child would not have the same quality of life without his father. The applicant's spouse also asserts that her child would suffer in the applicant's absence. While counsel and the applicant's spouse make the claim that the child would suffer, the record does not document this hardship. We also note that the child is not a qualifying relative and the record does not establish the impact of any emotional hardship the child might suffer on her mother, the only qualifying relative.

While the AAO acknowledges that the applicant's spouse will suffer hardships as a result of her separation from the applicant, we do not find that these hardships, even when viewed in the aggregate, rise above those normally created by separation. Therefore, the applicant has not demonstrated that his spouse would experience extreme hardship if the waiver application is denied and she remains in the United States.

Counsel asserts that the applicant's spouse would also suffer hardship if she relocates to Macedonia with the applicant. Counsel states that if the applicant's spouse moves to Macedonia, she would have to leave the lifestyle she knows and would be separated from her friends and family. He also contends that her life would be very difficult in Macedonia as there are no jobs, no health insurance and no housing.

The applicant's spouse states that relocating to Macedonia would result in extreme hardship for her. She asserts that it would be unsafe for her and her child as she and the applicant are ethnic Albanians. The applicant's spouse further asserts that they would have no jobs or means of support, no housing, and no health insurance in Macedonia.

The record includes two online articles, "Two Major Muslim Minorities of Macedonia: Albanians and Turks" from axisglobe.com and "Macedonia" from infoplease.com, both of which indicate there are tensions between ethnic Albanians and Macedonians; two online articles, "Macedonia Risk Assessment: Political social economic conditions" and "Macedonia Risk Assessment: Crime" from professionaltravelguide.com, which discuss risks for travelers to Macedonia; an online article "Expatriate Life in Macedonia," by [REDACTED] published at EscapeArtist.com, which reports on living in Macedonia as a foreign visitor; a summary of an East European Studies discussion prepared by the Woodrow Wilson International Center for Scholars and published on wilsoncenter.org; and a March 25, 2009 EU press release, entitled, "Macedonians rate their own health above the average of the twelve new EU Member States," published at eurofound.europa.eu. The release reports that Macedonians rate the quality of and access to their health care system the second lowest across Europe. The record also includes an April 16, 2009 Country Specific Information on Macedonia, which indicates that the security situation in Macedonia is stable and that violent crime against Americans is rare, although petty street crimes do occur. With regard to health care in Macedonia, the report states that most public hospitals and clinics are not equipped and maintained at U.S. or Western European standards, and that specialized treatment many not be obtainable. The record also includes a Department of State Background Note on Macedonia covering its history, government, economy, trade, foreign relations, defense, etc.; and portions of the section on Macedonia from the CIA World Factbook, which provides an overview of the country.

These country conditions materials, however, fail to indicate that the applicant's spouse would be at risk in Macedonia. One of the two online articles which indicate there are tensions between ethnic Albanians and Macedonians, "Two Major Muslim Minorities of Macedonia: Albanians and Turks," primarily discusses estimates of the percentage of the Macedonia population who are Albanians, which according to 2004 estimates, was in the 19.2 percent range. The article also indicates that some estimates put the Albanian percentage at up to 40 percent of the population. The article also indicates that tensions between Albanians and Macedonians started well before independence in 1991. The article "Macedonia Risk Assessment: Crime" states that "Crimes are generally those of opportunity, such as pickpocketing and snatch-and-run offenses," and that "Organized crime and the smuggling of drugs, weapons and illegal immigrants are serious problems in the Balkans," but that "Such activities are unlikely to target visitors directly, but there's some risk of being caught up in events," and that in areas with ethnic tensions, there are risks of being detained or harassed by security personnel. These country specific reports in the record, however, do not support a conclusion that the applicant's spouse and his child would be targeted in Macedonia on account of their Albanian ethnicity.

The AAO finds, therefore, that even when the hardship factors in this proceeding are considered in the aggregate, the applicant has failed to establish that his qualifying relative would suffer extreme hardship were she to reside with the applicant in Macedonia due to his inadmissibility.

As the record fails to establish that a qualifying relative would experience extreme hardship as a result of the applicant's inadmissibility, he is statutorily ineligible for a waiver of inadmissibility under section 212(i) 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.

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. *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.