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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**



H5

Date: APR 25 2012 Office: VIENNA, AUSTRIA 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:

[REDACTED]

**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, Vienna, Austria, 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 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 seeking to procure admission to 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 father of a U.S. citizen child. He 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) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and child.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 3, 2010.

On appeal, the applicant, through counsel, claims that the decision "failed to consider all of the extreme hardships that would result to the applicant's US citizen spouse, to wit: her medical and psychological condition." *Form I-290B*, dated June 1, 2010. Counsel submitted new hardship evidence on appeal.

The AAO notes that on appeal, the applicant, through counsel, requested 30 days to submit a brief and evidence to the AAO. *Form I-290B, supra*. On June 1, 2010, counsel requested additional time to complete the brief; however, the brief was never submitted to the AAO. Therefore, the record is considered complete.

The record includes, but is not limited to, a statement from the applicant's wife, a letter of support for the applicant, medical documentation for the applicant's son, country-conditions documents for Albania, and documents pertaining to the applicant's removal proceeding. 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.
- . . . .
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

- (1) The [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.

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 of Immigration Appeals (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.

In the present case, the record indicates that on February 2, 2007, the applicant attempted to enter the United States by presenting an Italian passport in someone else's name. On September 7, 2007, the applicant was removed to Albania after withdrawing his application for asylum. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding.

A waiver of inadmissibility under section 212(i) of the Act is dependent first 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 and his son 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

On appeal, counsel states the applicant is afraid to live in Albania because after his father was murdered, a "blood feud" developed between the applicant's family and the family of the man who murdered the applicant's father. In a statement dated April 11, 2007, [REDACTED] states the applicant's father was "executed," and the applicant was "under ongoing surveillance from the Secret Service." However, in a sworn statement dated February 2, 2007, the applicant stated he wanted to leave Albania because his father was murdered by criminals after they "kick[ed] them out of the disco" that his father owned. Additionally, in a statement dated December 10, 2009, the applicant's wife states the applicant's father was murdered by a "terrorist gang" that had assaulted the applicant several times

before. She claims that the applicant and his family members were threatened by other members of the [REDACTED] and that is why he had to leave Albania. Counsel claims that according to the Code of Lekë Dukagjini, a “medieval code of revenge” submitted with the appeal, the “blood feud extends to all males in the family,” making both the applicant and his son “subject to revenge.” Counsel also claims that the applicant’s wife will live in fear and “will be forced to change her life to protect her son.”

Counsel states that the applicant’s wife is suffering a “medical and psychological condition;” however, the record contains no medical documentation establishing that the applicant’s wife suffers from any medical and psychological condition. Going on record without supporting documentation is not sufficient to meet the applicant’s burden of proof in this proceeding. *See 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 also states that the applicant’s son requires “frequent medical attention and medication,” and his “health and well-being would be in jeopardy” because medical care in Albania “is grossly inadequate.” As a result, he claims that the applicant’s wife would suffer extreme hardship because her son will not receive adequate healthcare in Albania. Medical documentation in the record establishes that the applicant’s son has been seen for eczema and recurrent bronchiolitis, but it fails to show that treatment is available only in the United States. Additionally, though the applicant’s son may suffer some medical hardship in Albania, he is not a qualifying relative, and the applicant has not shown that this hardship to their son would elevate his wife’s challenges to an extreme level.

The AAO acknowledges that the applicant’s wife is a citizen of the United States and relocation abroad would involve some hardship. However, the applicant’s wife also is a native of Albania and it has not been established that she does not speak Albanian or that she has no family ties to Albania. Additionally, as noted above, there is no evidence in the record to establish that the applicant’s wife and son cannot receive medical treatment in Albania for their medical conditions. Further, the AAO notes that the applicant believes his life is in danger in Albania because of the blood feud; however, no documentary evidence was submitted establishing that he cannot reside in another area of Albania where he and his family will be safe. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Albania.

Regarding the hardship caused by their separation, the applicant’s wife states that without the applicant, their “family unity would [be] permanently broken” and their “life as spouses would be destroyed.” Counsel claims that if the applicant cannot return to the United States, his wife “would not be able to adequately care for [their] child.” As noted above, the applicant’s son has been seen by a doctor for eczema and bronchiolitis. Additionally, the applicant’s wife states that since the applicant’s “life is in danger,” it is “hard for him to financially and economically support” their family, and since she cares for their son, it is difficult for her to obtain employment.

Though the applicant’s wife refers to financial difficulties, the record does not contain any material establishing that the applicant’s wife is unable to support herself in the applicant’s absence. Additionally, the applicant has not distinguished his wife’s financial challenges from those commonly experienced when a family member remains in the United States. Further, the submitted country

conditions documents do not establish that the applicant is unable to obtain employment in Albania and, thereby, financially assist his wife from outside the United States. The AAO also notes that the applicant's wife may be suffering some hardship in having to care for their son alone; however, no documentation has been submitted establishing that her hardship is extreme. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds 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.