

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



115

Date: DEC 27 2012

Office: JACKSONVILLE, FL



IN RE: Applicant 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Jacksonville, Florida. 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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and is the son of lawful permanent resident parents. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and parents in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the field office director erred in not considering hardship to the applicant's parents. In addition, counsel contends the applicant established extreme hardship, particularly considering his wife's and parents' medical problems and country conditions in Albania.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on May 10, 2009; a statement from the applicant; several letters from Ms. [REDACTED]; a letter from the applicant's mother; a letter from Ms. [REDACTED] physician; a letter from Ms. [REDACTED] employer; transcripts from Ms. [REDACTED] school; copies of tax returns, bank account statements, and other financial documents; a letter from the applicant's mother's physician and copies of the applicant's parents' medical records; letters of support; a copy of the U.S. Department of State's Human Rights Report for Albania and other background materials; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien

In this case, the record shows that in 2000, the applicant attempted to enter the United States using a Slovenian passport issued to [REDACTED]. The applicant's Albanian passport was found in his luggage and he was refused entry into the United States. The record further shows, and the applicant does not contest, that he entered the United States in March 2001 using another individual's passport. To the extent counsel asserts that the applicant was only seventeen years old when he entered the United States using a fraudulent passport in 2000, neither the statute nor caselaw excuses a willful misrepresentation made by a minor. *Cf. Malik v. Mukasey*, 546 F.3d 890, 892-893 (7th Cir. 2008) (holding that two 17-year-old brothers whose father had misrepresented their identities, nationality, and religious affiliation when he listed them as derivatives on his asylum application, could be held accountable for that fraud). In any event, counsel's contention is factually incorrect as the record shows that the applicant was nineteen years old when he used the fraudulent passport in March 2001, not seventeen years old. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

In this case, the applicant’s wife, Ms. [REDACTED] states she works full-time as a Coder and is back in college to become a registered nurse after waiting for ten years to go back to school. In addition, Ms. [REDACTED] states that after she was unable to become pregnant, she was diagnosed with severe Polycystic Ovary Syndrome (PCOS). She also contends her anxiety and anxiety attacks have been increasing. Moreover, according to Ms. [REDACTED] she cannot afford the cost of living, working, and taking college classes on her salary alone, without her husband working at his family’s restaurant over twelve hours a day, six days a week. Furthermore, Ms. [REDACTED] states that she has never traveled outside of the United States. She states that if she relocated to Albania to be with her husband, she could not attend classes or get a job. She states she does not speak Albanian, would have to give up her job and all of the retirement and healthcare benefits the job includes, and would be completely isolated. She contends she has a Certified Professional Coding license, must remain certified each year which includes completing at least eighteen hours of Continuing Education Units annually, and has worked in the healthcare industry since she was sixteen years old. In addition, she states that living in Albania, they would become very poor people and her husband could only get a job as a field hand. She further contends she would not be able to afford a plane ticket to ever see her parents or grandparents again. She states her grandmother raised her for the first fifteen years of her life and that her family is very close. Moreover, Ms. [REDACTED] contends that Albania is a dangerous place, ranking fifth in the world for murders committed by youth and that the country has problems with trafficking women and

children. According to Ms. [REDACTED] her chance of having a family in Albania would no longer be achievable given Albania's subpar healthcare.

In addition, the applicant's mother states that raising the applicant in Albania was not easy and that they lived in constant fear. She states she has lived in the United States since 2002, has no remaining connections in Albania, and has her entire family in the United States, including her parents, her sister, and her other son. According to the applicant's mother, she has an extra special relationship with the applicant and she fears she will endure depression and a heart attack if her son cannot come to the United States. In addition, she states that she is unable to financially provide for herself due to recent health issues and the applicant has cared for their family business, a restaurant. She states she is on medications for abnormal bleeding and hypertension, has had abnormal thyroid findings, had a cancerous melanoma removed by a dermatologist, and has a decreasing ability to see out of her left eye. She contends she must be followed by her physician every three months for any new cancer spots.

After a careful review of the record, the AAO finds that if Ms. [REDACTED] relocated to Albania to be with her husband, she would experience extreme hardship. The AAO acknowledges Ms. [REDACTED] contention that she has lived in the United States her entire life, has never been outside of the United States, and does not speak Albanian. Documentation in the record confirms that she has been diagnosed with severe PCOS, a hormonal imbalance which if left untreated, can lead to serious health problems such as diabetes and heart disease. A letter from her employer corroborates her contention that she is a certified coder and billing representative at a health care agency and the AAO acknowledges that relocating to Albania would entail leaving her employment and jeopardize her certification. Considering all of these unique factors cumulatively, the AAO finds that the hardship Ms. [REDACTED] would experience if she relocated to Albania to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, Ms. [REDACTED] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Although the AAO is sympathetic to the couple's circumstances, if Ms. [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding her diagnosis of PCOS, the AAO acknowledges the couple's desire to conceive a child. Nonetheless, the record does not show how the applicant's situation is extreme, unique, or atypical compared to others in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). Regarding Ms. [REDACTED] contention that she cannot support herself on her income alone, the record shows that she earned \$33,480 in wages in 2010 and she filed an Affidavit of Support under Section 213A of the Act (Form I-864), affirming she would financially support the applicant based on her salary alone. The AAO notes that although the record contains numerous references to the fact that the applicant works twelve-hour days, six days a week at his family's restaurant, the couple's tax returns do not claim any wages for the applicant and state his occupation as "homemaker." Therefore, there is insufficient consistent information in the record to evaluate the extent of Ms. [REDACTED] financial hardship. To the

extent Ms. [REDACTED] contends she would suffer emotionally and mentally, there is insufficient evidence in the record to show that her mental hardships, and the symptoms she may be experiencing, such as depression, stress, and anxiety, are unique compared to other individuals separated from a spouse. Even considering all of the evidence in the aggregate, there is insufficient evidence for the AAO to conclude that Ms. [REDACTED] would suffer extreme hardship if she decided to remain in the United States without her husband.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the applicant's wife.

With respect to the applicant's parents, there is insufficient information in the record to show that either of them would suffer extreme hardship if their son's waiver application were denied. If they decide to remain in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion. Regarding the applicant's parents' contention that they rely on the applicant to take care of their restaurant business, at the same time, the record shows that the applicant's brother is listed as the agent for the business. According to counsel, the applicant's brother lives in Jacksonville, Florida, where the applicant and his parents live. However, neither of the applicant's parents addresses to what extent their other son assists with the family business and there is no letter in the record from the applicant's brother. Even assuming their other son is unable or unwilling to manage the business, the record does not indicate that either of the applicant's parents, who are currently fifty-three and fifty-five years old, are unable to care for themselves, or their business, despite their medical conditions. There are no documents in the record addressing the financial situation of the restaurant and whether they can hire someone to help them. Although the record contains medical documentation corroborating the claim that both of the applicant's parents have medical issues, the AAO notes that the majority of the medical documents in the record are reports that are intended for review by medical personnel. The AAO is not in the position to interpret these reports. Other than a single letter indicating the applicant's mother has a newly found goiter, there is no letter in plain language from a medical professional explaining either of the parents' medical conditions. In addition, there is no suggestion in the record to indicate that either of them requires assistance with daily living. The record does not address whether their other son may be able to provide them with whatever assistance they may need. The AAO acknowledges the difficulties the applicant's parents experienced raising him in Albania and their dream to have their family together in the United States. However, record does not show how separation from their son is a situation that is unique or atypical compared to others in similar circumstances. Even considering all of the evidence in the aggregate, there is

insufficient evidence for the AAO to conclude that either of the applicant's parents would suffer extreme hardship if they decided to remain in the United States without their son.

Furthermore, the record does not show that the applicant's parents would suffer extreme hardship if they moved back to Albania to be with their son. Although the applicant's mother contends they have no connections remaining in Albania, the record shows that both of the applicant's parents were born in Albania and are familiar with the culture in Albania. To the extent the applicant claims his father was receiving threats from the Socialists in Albania, significantly, the applicant's father has not submitted any letter or statement to address the hardship he would experience upon returning to Albania, nor does the applicant's mother address this contention in her statement. In addition, there is no independent evidence in the record to corroborate the claim that the applicant's father fled Albania for fear of the political party at the time. Regarding the applicant's parents' medical issues, there is no evidence in the record to show that their conditions cannot be adequately monitored or treated in Albania. Considering all of the evidence in the aggregate, the record does not show that either of the applicant's parents' return to Albania would be extreme or that their situation is unique or atypical compared to others in similar circumstances.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife or either of the applicant's parents caused by the applicant's inadmissibility to the United States. 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, 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.