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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



HS

DATE: **FEB 21 2012**

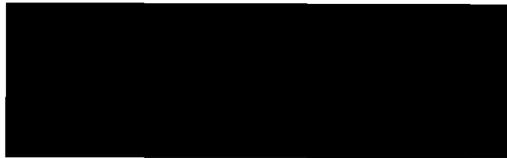
Office: VIENNA, AUSTRIA

File: 

IN RE: Applicant: 

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 Officer-in-Charge, Vienna, Austria, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Albania, who resided in the United States from August 2004 to September 2007. He was found to be inadmissible to the United States under 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 procured admission to the United States through fraud or misrepresentation, and under 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. The applicant does not contest these findings of inadmissibility. Rather, he is seeking a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The officer-in-charge concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Ground of Inadmissibility (Form I-601). *Decision of the Officer-in-Charge*, dated July 23, 2009.

On appeal, the applicant contends through his wife in the Notice of Appeal (Form I-290B) that the denial decision gave undue weight to their lies and deception, did not consider all the evidence submitted, and therefore erred in overlooking the extreme hardships that she will suffer as a result of the applicant's inadmissibility.

In support of the appeal, the applicant submits information including a memorandum from his wife; letters of support; college transcripts; documentation regarding complaints lodged with the court against immigration counsel and counsel's response¹ as well as a blog referencing this attorney; a doctor's evaluation; checks from his wife to her brother; a receipt for a wire transfer and a pay stub showing his wife's salary; and a newspaper article regarding human trafficking in Albania. The record on appeal also includes the documentation submitted in support of the original waiver request. The entire record was reviewed and considered in rendering this decision.

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

Misrepresentation

(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.

¹ The AAO notes that, although these materials are referred to as complaints against her lawyer, the record shows the applicant's wife admitting that no lawyer-client relationship arose from the consultation she and her husband had with this attorney. We note that no disciplinary action appears to have resulted.

Section 212(i) of the Act provides:

(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 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 [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)(B) of the Act provides, in pertinent part:

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 Attorney General (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 the applicant procured admission to the United States through presentation of a fraudulent passport and visa. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation and under section 212(a)(9)(B)(i)(II) for having been unlawfully present in the United States for a period of more than one year.

A waiver of inadmissibility under sections 212(i) and 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. The applicant's U.S. citizen 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-Moralez*, 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 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.

The applicant's wife contends that she will suffer emotional and financial hardship if the applicant is unable to reside in the United States. In her July 30, 2009 statement, she states that the stress and depression caused by separation from her husband prevented her from completing one of her university classes. The record shows she received an "incomplete" and contains letters from healthcare providers listing her medications and the counseling she has undertaken since 2008 to address these emotional issues. Evidence indicates that the applicant's wife is employed at the university where she is enrolled, and that she and a brother help care for their parents and a younger sister, age 17. There is also evidence that her 52 year old mother and 65 year old father are under medical care for various conditions. The record establishes she is under pressure from a number of sources besides separation from her husband, but indicates that the three siblings and their parents live together and enjoy a close family bond.

In support of the financial hardship claim, the record contains a wire transfer to the applicant from his wife, as well as unsupported claims that he is unable to find work in Albania and she cannot afford the expense of visiting him there. Although there is no evidence regarding the applicant's contribution to household maintenance while present in the United States, the record indicates that he was studying here. The record shows that, after the applicant's departure, his father-in-law was laid off and is no longer working, but is unclear regarding whether his mother-in-law remains employed. Documentation shows that the applicant's wife and her brother share responsibility for household maintenance, but evidence is lacking regarding their respective roles. Her brother states that she earns more than him and helps him pay the mortgage. Other than checks payable to her brother,² the record lacks documentation of her claimed contribution to the mortgage and contains no evidence of his financial resources or type of job. We note she claims to have visited Albania at least four times, including attending the applicant's January 2009 visa interview, but the record does not reflect whether she has traveled to Albania since then. There is insufficient evidence of the applicant's wife's overall financial situation to establish that, without the applicant's physical presence in the United States, his wife is experiencing financial hardship. 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)).

The record does not show that the cumulative effect of the emotional and financial hardships the applicant's wife is experiencing due to her husband's inadmissibility goes beyond the hardship normally imposed by the separation from a loved one or the need to support two households. The AAO thus concludes that, based on the record evidence, were the applicant's wife to remain in the United States without the applicant due to his inadmissibility, she would not suffer extreme hardship.

² The AAO notes that these checks do not indicate the purpose for which her brother, the payee, is to use the money.

The qualifying relative asserts that she would experience extreme hardship if she relocated abroad to reside with the applicant due to his inadmissibility. The record shows that moving abroad would interrupt her studies and impact her current job, thereby affecting her career options, and impose a burden on her U.S. household. Although the applicant's wife appears to help her parents cope with medical issues, they have two other children living at home besides the applicant's wife to render assistance. Furthermore, it is noted that Congress did not include hardship to an alien's in-laws as a factor to be considered in assessing extreme hardship. In the present case, the applicant's wife is the only qualifying relative, and hardship to her parents will not be separately considered, except as it may affect her.

The applicant's wife, who is nearly 30 years old, claims for the first time in her appeal statement that she was sexually assaulted while a teen in Albania and, therefore, is too fearful to return. This concern is absent from both of the psychological evaluations she provided. She states that, although her husband and family are unaware of this claim, she hoped that USCIS would guess that her research interest in trafficking was based on personal experience. As the record contains no evidence supporting this statement, and is silent except for this recent assertion by the applicant's wife, it is insufficient to establish the facts asserted. The AAO further notes from the record that the applicant's wife returned to Albania to marry the applicant and on several other occasions.

The applicant and his wife were both born and raised in Albania, and the record indicates that she emigrated with her family on a diversity visa at the age of 16, married the applicant there, and returned at least four times. In the aggregate, the hardships she claims she would experience if she relocated to Albania do not amount to hardship that is beyond the common or typical result of removal and inadmissibility of a loved one. *See Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991) (uprooting of family and separation from friends are the types of inconvenience experienced by most families of alien deportees and do not necessarily amount to hardship that is extreme). The applicant has therefore not met his burden of establishing that his wife would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

The documentation in the record, when considered in its totality, reflects that the applicant has not established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation is typical of individuals separated as a result of removal and the AAO therefore finds that the applicant has failed to establish extreme hardship to his wife as required under section 212(i) of the Act.

The AAO further finds that, even were the applicant to have met the statutory requirements for waiver eligibility by showing such hardship, a favorable exercise of discretion would likely be unwarranted due to repeated willful misrepresentations by the qualifying relative, her parents, and the applicant. The record indicates that after the applicant entered the country on a fraudulent passport in 2004, his wife failed to divulge that he was already in the United States when she filed Form I-129F, Petition for Alien Fiancé(e) in April 2007. In addition, her parents falsely swore in support of the fiancé(e) petition that their daughter and the applicant could not fulfill the requirement of seeing each other within the preceding two years because tradition prevented her from going to Albania to meet with him, when he was actually in the United States from 2004 to 2007. Further, at

his 2009 immigrant visa interview, the applicant continued to deny under oath ever being in the United States, until confronted with photographic evidence showing him at New York's JFK Airport; and, after seeing this evidence, the applicant insisted he had stayed only a few days when he had remained for three years.

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. 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.