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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

[REDACTED]

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Date: MAR 09 2012

Office: NEW YORK

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.

Thank you,

Maria Yeh

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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The record reflects that the applicant, a native and citizen of Kosovo (former Yugoslavia) 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 procuring admission to the United States through fraud or misrepresentation. The applicant entered the United States on June 3, 1991 using a fraudulent passport. The applicant 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), to reside in the United States with his U.S. Citizen spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated June 12, 2009.

The record contains: a brief in support of appeal filed by the applicant's attorney; affidavits from the applicant's spouse; medical documentation for the applicant's spouse; financial documentation; and additional documentation in support of the applicant's waiver and appeal. The entire record was reviewed and considered in rendering this decision.

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

- (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:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

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. The applicant's wife is the qualifying relative in this case. Under this provision of the law, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences

extreme hardship. 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 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.

Counsel asserts that the applicant's spouse became anxious and depressed because of fear that the applicant would be deported. The record indicates that the applicant's spouse has been diagnosed with Major Depressive Disorder, Recurrent, Moderate. *See Initial Evaluation*, [REDACTED] dated June 25, 2009. A doctor referred the applicant's spouse to a psychologist and a psychiatrist. *See Statement of* [REDACTED] dated June 24, 2009. The psychologist report indicates that the applicant's spouse is suffering from Depressive Disorder of a major of a major order, with chronic sleeplessness, frequent headaches, poor appetite, agitation, and anxiety attacks. The psychologist stated that the precipitating stressor that appears to have brought about the depression was a review of the applicant's immigration status. *See Letter of* [REDACTED] dated June 29, 2009. The applicant's spouse was prescribed anti-depressant medication. *See Initial Evaluation*, [REDACTED] dated June 25, 2009. According to the applicant's spouse, she is seeing a doctor twice a week in psychotherapy. *See Affidavit of* [REDACTED] dated July 9, 2009.

The applicant's spouse states that she will face financial difficulty if the applicant is not permitted to remain in the United States. According to the applicant's spouse, the applicant works as a superintendent of a building, and the family resides in an apartment within the building, a benefit of the job. The applicant's spouse states that she will not be able to afford housing for her family if the applicant is relocated to Kosovo. *See Affidavit of* [REDACTED] The record contains financial documentation, including an employment letter for the applicant, and copies of past federal income tax returns. The applicant's attorney contends that if the applicant has to return to Kosovo, the family would have difficulty to find a place to live, and the applicant's spouse would have a difficult time finding a job to support herself and her four U.S. citizen children due to her lack of education. *See Brief in Support of Appeal*, dated July 9, 2009. Thus, the record establishes that the applicant's spouse will suffer extreme hardship if the waiver is denied, and she is separated from the applicant.

In addition, the applicant's son has asthma, and the applicant's spouse indicated that she is worried about the conditions that the applicant's son will face in Kosovo should the family relocate. *See Affidavit of* [REDACTED] The record indicates that the applicant's son is monitored on a daily basis for asthma symptoms by the applicant, and is given Albuterol via an inhaler for the symptoms. *See report of* [REDACTED] dated April 8, 2009. The record includes evidence from the U.S. Department of State indicating that health facilities in Kosovo are limited, and medications are in short supply. *See U.S. Department of State, Country Specific Information, Kosovo*, dated December 30, 2008. The applicant submitted further documentation to the record regarding the inadequacy of health facilities in Kosovo. As noted above, under section

212(a)(9)(B)(v) of the Act, children are not deemed to be “qualifying relatives.” However, although children are not qualifying relatives under this statute, USCIS does consider that a child’s hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship.

The record further indicates that the applicant’s spouse would experience hardship were she and her family to relocate to Kosovo with the applicant. The applicant’s attorney contends that there is political violence of radical armed groups in Kosovo, and that there is simmering of inter-ethnic tensions in a country which still lacks the rule of law. The applicant’s attorney further contends that an international military peacekeeping force has declared that it will remain in Kosovo for years to come because of the potential for violent armed clashes. *See Brief in Support of Appeal*. In support of these contentions, the record includes a copy of the U.S. Department of State Report on Human Rights Practices for Kosovo, 2008, released on March 11, 2009. The applicant’s spouse fled from Kosovo due to persecution in that country, and the record indicates that the applicant’s spouse was granted asylum in the United States on March 22, 1996. In addition, as noted above, the applicant’s son would have difficulty finding adequate health care for his asthma condition. Thus, based on the evidence on the record, the applicant has established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Kosovo to reside with the applicant.

The AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of “extreme hardship.” It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country’s immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien’s bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country’s Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien’s good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “balance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and

humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse and four U.S. Citizen children would face if the applicant were to reside in Kosovo, regardless of whether they accompanied the applicant or remained in the United States; the applicant's apparent lack of a criminal record; and the passage of more than 10 years since the applicant arrived in the United States. The unfavorable factors in this matter are the applicant's unlawful entry into the United States and unlawful presence while in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.