

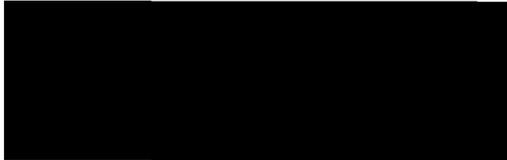
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U. S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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Date: MAR 14 2012 Office: NEW YORK, NY

FILE:



IN RE:



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.

Thank you,

for 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.

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, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry into the United States by fraud or willful misrepresentation on June 26, 2007. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(h) in order to reside in the United States.

In a decision, dated November 19, 2009, the District Director found that the record failed to establish that the hardship faced by the applicant's spouse would rise to the level of extreme hardship as a result of his inadmissibility. The waiver application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated November 23, 2009, counsel states that the district director's decision was a mistake of fact and law as it failed to engage in a meaningful analysis of the extreme hardship factors facing the applicant's spouse. Counsel states that the applicant's spouse will suffer extreme medical and psychological hardship as a result of the applicant's inadmissibility.

The record indicates that on June 26, 2007 the applicant entered the United States at the [REDACTED] port of entry as a visitor under the Visa Waiver Program when he presented a fraudulent Italian passport to immigration officers.

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.

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

- (1) 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. Hardship to the applicant 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.

The AAO notes that the record of hardship includes: counsel's brief, two statements from the applicant's spouse, medical records for the applicant's spouse, country conditions information for [REDACTED], a letter from the applicant's spouse's psychotherapist, and financial documentation for the applicant's spouse.

The applicant's spouse is claiming medical, psychological, and financial hardship as a result of the applicant's inadmissibility. In regards to relocation, she is claiming extreme medical hardship because in 2007 she had gastric bypass surgery and she has Type II diabetes. She claims that she will not be able to access the proper health care for these conditions in [REDACTED]. In addition, the applicant's spouse is claiming that relocation would be an extreme emotional hardship because she would no longer be able to attend her weekly psychotherapy sessions for an eating disorder, sessions she has been attending since 2004 and she would be separated from her parents and siblings in the United States. The applicant's spouse claims financial hardship as a result of relocation because she would have to leave her employer of the past 25 years and she would lose her health insurance coverage and other benefits. The applicant's spouse also claims she would not be able to pay off her debts if she relocated to [REDACTED] and she would not be able to practice Catholicism freely in [REDACTED].

The AAO finds that the medical records, financial documentation, and letter from the applicant's spouse's psychotherapist support the applicant's spouse's claims regarding extreme hardship as a result of relocation. The country condition reports submitted as part of the record also support the applicant's spouse's claims regarding medical care in [REDACTED] but do not support the claim that the applicant's spouse would be unable to practice Catholicism in the country. The CIA World Factbook indicates that 10% of the [REDACTED] population is Roman Catholic and that in 1990 the country began allowing the private practice of religion. However, based on the medical, psychological and financial claims that are supported by the record, the AAO finds that the applicant has established that she will suffer extreme hardship as a result of relocation.

In regards to separation the applicant's spouse claims that she will suffer extreme emotional hardship in the form of depression and anxiety. This claim is supported by the letter from the applicant's spouse's psychotherapist, who states that the applicant's spouse suffers from an eating disorder, has low self-esteem, depression, and anxiety. She also states that in response to the applicant's immigration situation the applicant's spouse has been dealing with an increased level of depression and anxiety which has resulted in panic attacks. Thus, the AAO finds that given the applicant's spouse's history of depression, anxiety, and an eating disorder, when all the hardship factors are considered cumulatively, the applicant has demonstrated that his spouse would suffer extreme hardship as a result of separation.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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). The BIA has stated:

In evaluating whether section 212(h)(1)(B) 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-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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 adverse factors in the present case are the applicant's fraudulent entry into the United States and his illegal residence in the United States. The favorable factors in the present case are the hardship to the applicant's U.S. citizen wife if he were to be denied a waiver of inadmissibility; the applicant's lack of a criminal record; and, as indicated by his spouse, his attributes as a good husband.

The AAO finds that the immigration violation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.