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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
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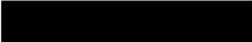


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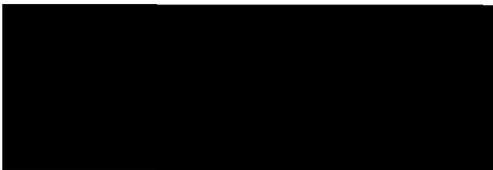
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DATE: OFFICE: VIENNA, AUSTRIA FILE: 

IN RE: **MAY 23 2012** Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v)

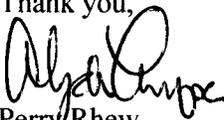
ON BEHALF OF APPLICANT:



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 with the field office or service center that originally decided your case by filing a 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,

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 applicant is a native and citizen of Albania who 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation, and 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 and seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and child, born in 2000.

The Field Office Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director*, dated February 10, 2010.

On appeal, counsel asserts that the applicant's U.S. citizen spouse would suffer extreme hardship if a waiver is not granted. See *Counsel's I-601 Appeal Brief*, received March 9, 2010.

The record contains but is not limited to: Forms I-290B and counsel's briefs; numerous immigration applications and petitions; hardship affidavit; psychological evaluations; birth and marriage records; applicant's criminal record and records concerning his inadmissibility, immigration court proceedings and removal. The entire record was reviewed and considered in rendering this 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.

The record reflects that the applicant entered the United States on October 12, 1998, using a fraudulent Albanian passport containing a fraudulent U.S. visa. The applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). On April 23, 2002 the applicant was ordered removed by the Immigration Judge, and on August 30, 2002 the Board of Immigration Appeals affirmed the decision. The applicant was removed from the United States on November 2, 2005.

Section 212(a)(9) of the Act provides:

- (B) 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.

The record reflects that the applicant was ordered removed by the Immigration Judge on April 23, 2002, a decision affirmed by the Board of Immigration Appeals on August 30, 2002. The applicant accrued unlawful presence from August 30, 2002 until his removal on November 4, 2005, a period in excess of one year. As the applicant is seeking admission within 10 years of his removal, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

The AAO notes that in 2004, the applicant was convicted of Larceny in the 6th Degree. The applicant was ordered to pay a fine. The issue of whether or not the applicant was convicted for a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act has not been addressed. Nevertheless, because the applicant is inadmissible under sections 212(a)(6)(C)(i) and 212(a)(9)(B) of the Act and demonstrating eligibility for a waiver under sections 212(i) and 212(a)(9)(B)(v) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

A waiver of inadmissibility under sections 212(i) and 212(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. Hardship to the applicant or the applicant's child can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is the only qualifying relative. 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.

The record reflects that the applicant's spouse is a 46-year-old native of Albania and citizen of the United States. Addressing separation-related hardship, she states that she and her daughter are suffering psychologically in the applicant's absence. The applicant's spouse contends that she is under severe stress and suffers insomnia as a result. [REDACTED] who interviewed the applicant's spouse once in October 2007 and a second time in July 2009, writes that "it appears" that her psychological status has deteriorated. [REDACTED] indicates that the applicant's spouse is depressed, anxious, and reported that her sleep is impaired and she is still

grieving the October 2008 death of her father. [REDACTED] asserts that under continued stress, including separation from the applicant, the applicant's spouse is at risk for further psychological deterioration. [REDACTED] writes on July 2, 2009, that the applicant's spouse "is under stress and has mild insomnia." According to [REDACTED] prescribed Paroxetine (a generic form of Paxil, an antidepressant) 10 mg daily which the applicant's spouse began taking in July 2009. The documentation provided is insufficient to establish that the applicant's spouse would experience emotional hardship beyond others in the same situation.

Assertions are made concerning the applicant's now 11-year-old daughter, [REDACTED]. [REDACTED] asserts that [REDACTED] suffered a severe loss at 5-years-old when her father was deported, and has been exposed to depression and anxiety within her family. [REDACTED] writes that at the time of his 2009 interview with the applicant's spouse, [REDACTED] had successfully completed second grade and remains in good health. He indicates that the applicant's spouse is concerned about [REDACTED] intense crying when her parents speak on the phone and when [REDACTED] speaks with her father directly she says "Daddy, I miss you" and cries. [REDACTED] relays from the applicant's spouse that [REDACTED] has nightmares about seeing her father in leg shackles at the immigration office. In a November 2007 letter to [REDACTED], [REDACTED] writes that the applicant's spouse told her [REDACTED] has ongoing difficulties adjusting to the absence of her father and exhibits symptoms of excessive crying that lead to physical symptoms like headache, fever or vomiting. [REDACTED] notes that [REDACTED] teacher reports that [REDACTED] is performing very well in school and does not exhibit any of the reported symptoms in school. [REDACTED] diagnoses the applicant's daughter with adjustment disorder with mixed anxiety and depressed mood as well as posttraumatic stress disorder in remission. [REDACTED] recommends that [REDACTED] attend individual weekly therapy sessions which she states will result in her improved moods. While the AAO has reviewed and considered the documents by [REDACTED] and [REDACTED] concerning [REDACTED] the record contains no evidence demonstrating whether she has attended any therapy sessions after November 2007, and the most recent document from July 2009 shows that she is successful in school and remains in good health. The evidence in the record is insufficient to establish separation-related hardship to the applicant's child such that it constitutes extreme hardship to the applicant's spouse.

The AAO acknowledges that separation from the applicant may cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse states that although her entire family resides in Albania she could not live there on a permanent basis as the economic conditions are difficult. She explains that while joining the applicant there from March 2006 to April 2007, the coffee shop she owned did not generate very much income. The applicant's spouse indicates that she sold the business, returned to the U.S. and determined it is impossible to live in Albania. The applicant's spouse asserts that she is the sole source of income for the applicant who has not worked since returning to Albania, thus she needs to work in the U.S. to support him. She states that the applicant lives in [REDACTED] with his mother, with whom the applicant's spouse told [REDACTED] she did not like living while there more than a year. The applicant's spouse does not address the possibility of residing with any of her family members, or other employment options in Albania.

Given this and that the record contains no documentary evidence addressing the applicant's lack of employment in Albania since November 2005, or his wife's ownership, income, and/or the sale of her business there, the evidence is insufficient to establish significant economic difficulties beyond those ordinarily associated with relocating abroad to join an inadmissible spouse.

The applicant's spouse asserts that her daughter could not adjust to life in Albania, chose not to attend school while there from March 2006 to April 2007, and has always considered the U.S. to be her home. The applicant's spouse does not elaborate with regard to the decision by her daughter - who was not yet 5 ½ years old at the time she was taken to Albania, not to attend school or the ways in which she could not adjust to life there. The evidence in the record is insufficient to establish relocation-related hardship to the applicant's child such that it constitutes extreme hardship to the applicant's spouse.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including economic and employment concerns and concerns for her young daughter's adjustment to life there. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if she were to relocate to Albania, her native country, to be with the applicant.

The applicant has, therefore, failed to demonstrate the challenges his spouse faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) and 212(a)(9)(B)(v) 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.