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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

#5

[Redacted]

Date: **SEP 11 2012**

Office: VIENNA, AUSTRIA

FILE: [Redacted]

IN RE:

Applicant: [Redacted]

APPLICATION:

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

*George Perry*  
Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Vienna, Austria. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The applicant is a native and citizen of Albania who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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. He was also found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or misrepresentation. In addition, he was found to be inadmissible to the United States pursuant to sections 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), because he was ordered removed. The applicant is married to a U.S. citizen and his father is a legal permanent resident. He seeks a waiver of inadmissibility in order to reside in the United States with his family.

In a decision dated July 9, 2010, the Field Office Director found that the applicant failed to establish that his qualifying relatives would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated July 9, 2010.

On appeal, the applicant's attorney asserts that the Field Office Director failed to consider all the evidence of hardship to the applicant's qualifying relatives and to correctly apply the legal standard applicable to waiver cases.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); an Application for Permission to Reapply for Admission after Deportation or Removal (Form I-212)<sup>1</sup>; a Notice of Appeal or Motion (Form I-290B); briefs written on behalf of the applicant; relationship and identification documents; letters from the qualifying spouse, their children, family, friends, employers and co-workers; psychological evaluations; medical documentation regarding the qualifying spouse, one of their sons and her father-in-law; financial documentation; photographs; documentation confirming the applicant's good character, including the absence of a criminal record; country-conditions materials; a letter from their son's school confirming his enrollment and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

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<sup>1</sup> The applicant also appealed the denial of his Form I-212 application. That appeal was decided in a separate decision.

(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) The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

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:

(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.

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. Hardship to the applicant or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife and father are the only qualifying relatives 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-I-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 indicates that the applicant entered the United States with a fraudulent Italian passport in January 1999. After his arrival, the applicant applied for asylum. His asylum application was denied and he was ordered removed by an Immigration Judge on September 25, 2000. The Immigration Judge's decision was affirmed by the Board of Immigration Appeals on November 12, 2002. The applicant thereafter filed a petition to review in the United States Court of Appeals for the Sixth Circuit, which was denied in 2004. On October 1, 2008, the applicant returned to Albania. The applicant accrued over one year of unlawful presence from January 1999 until his departure in 2008.<sup>2</sup> In applying for an immigrant visa, the applicant is seeking admission within ten years of his departure from the United States. The applicant has not disputed his inadmissibility. Therefore, as a result of the applicant's unlawful presence and prior misrepresentation, he is inadmissible to the United States under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act.

The AAO finds that the applicant has established that his qualifying relatives, his spouse and father, are suffering extreme hardship as a consequence of his separation from them. The applicant's attorney indicates that the qualifying spouse is suffering from emotional and psychological issues due to her separation from the applicant. To support these assertions, the record contains letters from the qualifying spouse, family members and friends, as well as two psychological evaluations. The psychological evaluations indicate that the qualifying spouse is suffering from severe depression, stress, weight gain, adjustment disorder and that her mental issues are interfering with her ability to perform her daily responsibilities. Letters from family and friends also confirm that she is suffering from depression, which affects her job performance and her ability to care for her children. The record also indicates that the applicant's spouse has been taking medications for her psychological problems. The qualifying spouse also indicates that she is struggling as a single mother and that she needs the applicant's emotional and financial support, as well as his assistance with childcare and with the care of the applicant's elderly father, who lives with her. Letters from the qualifying spouse, family and friends confirm that the applicant was a very involved parent who provided childcare for his sons during the day, as he worked a night shift. The record shows that the qualifying spouse is having a difficult time caring for her children without the applicant, that she is unable to dedicate the same amount of attention to them for psychological and financial reasons. As a result her children are experiencing emotional and behavioral issues, which are negatively impacting the qualifying spouse. With regard to the applicant's spouse's financial hardships, letters from the qualifying spouse, family and friends indicate that the qualifying spouse is struggling to financially to keep her home and to support and take care of their children and her father-in-law. Documentation related to her income and expenses demonstrates that she is financially suffering without financial contributions from the applicant.

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<sup>2</sup> The record indicates that the applicant was authorized to work between June 13, 2002 and June 12, 2003. However, because the record also indicates that he worked without proper work authorization, the period of time during which his asylum application was pending does not toll his unlawful presence. See section 212(a)(9)(B)(iii)(II) of the Act.

The applicant's qualifying father states that he is also experiencing depression and stress due to the absence of his son. He is physically and financially dependent on the qualifying spouse and the applicant, and therefore, the applicant's spouse's psychological and financial problems have negatively affected him as well. The applicant's father has medical issues relating to his heart and diabetes, and the qualifying spouse has been responsible for taking him to his medical appointments without the assistance of the applicant. As such, it appears that the psychological, emotional and medical issues that the qualifying spouse and qualifying father are experiencing constitute hardship beyond the common results of removal.

The applicant has also demonstrated that his qualifying spouse and qualifying father would suffer extreme hardship in the event that they relocated to Albania. The qualifying spouse has lived in the United States for over fifteen years. She has many relatives in the United States and lives with and takes care of her father-in-law. The letters provided by the qualifying spouse's family and friends describe her very close relationships with her family and friends in the United States. The qualifying spouse also indicates that the applicant is unemployed in Albania and has been unable to find employment. The record also reflects that the applicant's spouse has a home in the United States, and that she would take a loss if she tried to sell it and relocate to Albania. The record also contains *country-conditions information to support* assertions that the applicant's spouse would suffer financially in Albania due to a lack of employment opportunities. Moreover, the applicant's father is a widower, and his entire immediate family lives in the United States, including his two children and all of his grandchildren. He is elderly and has medical issues, for which he has been receiving treatment in the United States. As such, the record reflects that the cumulative effect of the hardships to the qualifying spouse and qualifying father, in light of their family ties to the United States, country conditions, financial considerations, the qualifying spouse's length of stay and the qualifying father's medical conditions, rises to the level of extreme. The AAO thus concludes that the applicant's qualifying spouse and parent would suffer extreme hardship if they relocated to Albania to be with him.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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).

*Id.* at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse, legal permanent resident father and U.S. children would face if the applicant is not granted; this waiver, whether they accompanied the applicant or remained in the United States; his lack of a criminal record; and his good character according to letters of support from family, friends, employers, and co-workers. The unfavorable factors in this matter are the applicant's use of a fraudulent document to gain admission to the United States, his unlawful presence and his unauthorized employment.

Although the applicant's violations of the immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.