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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



H5

Date: SEP 12 2012

Office: ROME, ITALY

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:

SELF-REPRESENTED

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,

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Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native 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 admission to the United States through fraud or misrepresentation. The applicant attempted to enter the United States on December 5, 2001, using a passport and a visa belonging to another person, and was subsequently removed from the United States on December 6, 2001. The applicant does not contest this finding, but rather seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States with his Lawful Permanent Resident wife.

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. *See Decision of the Field Office Director, October 21, 2010.*<sup>1</sup>

The record contains the following documentation: statements from the applicant and the applicant's spouse and children; a psychological evaluation of the applicant's wife and children; a statement from the priest at the applicant's spouse's church; a statement from a teacher of the applicant's daughter; a statement from a youth soccer coach; and financial documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

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 that:

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

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<sup>1</sup> The Field Office Director stated in his decision that in order for the applicant to be readmitted to the United States, the applicant would need to file a Form I-212, Application for Permission to Re-Apply for Admission to the United States After Deportation or Removal. The applicant was ordered removed under section 235(b)(1) of the Act. Under section 212(a)(9)(A)(i) of the Act, the applicant was inadmissible for a period of five years from the date of his departure, and under section 212(a)(9)(A)(iii) of the Act, the applicant would need to file the Form I-212 to apply for permission to reenter the United States while within that five year period. As more than five years have passed since the date of the applicant's departure from the United States, the applicant is no longer inadmissible under section 212(a)(9)(A)(i) of the Act, and is no longer required to file the Form I-212.

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. 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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's lawful permanent resident 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 applicant’s spouse states that she is suffering from financial hardship while living in the United States without the applicant. The applicant’s spouse states that she is unable to support herself and her two children in the absence of the applicant. The applicant’s spouse states that she is working for minimum wage at a rest home, and provided an itemized list of monthly expenses in her statement. The record includes bank statements showing an average balance of about \$1,500.00. A letter from the priest at the applicant’s spouse’s church in the United States indicates that the applicant’s spouse is suffering from financial difficulties, and further notes that she is unable to drive. The priest states that the Albanian community in Detroit, Michigan is trying to help the applicant’s spouse, but cannot provide the financial support that would be available to her if the applicant is able to reside with her in the United States.

The applicant’s spouse also states that she is suffering mental and emotional hardship in the absence of the applicant. The record includes a psychological evaluation of the applicant’s spouse and his two children. The evaluation states that the applicant’s spouse is struggling financially and emotionally, and is having difficulty caring for the two children. The evaluation concludes that the applicant’s spouse is suffering from depression, insomnia, a level of anxiety, agitation, issues of

abandonment and separation, impaired thought processes, and diminished capacity to function on a daily basis.

The psychological evaluation also states that the applicant's two children are significantly affected by their separation from the applicant, and are thus experiencing separation anxiety. As noted above, under section 212(i) 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 evaluation states that the applicant's spouse is suffering hardship due to her concern about raising the children alone, leaving them alone when she is at work, and her ability to be a good parent. The record includes a letter from the teacher of the applicant's daughter which states that the daughter is not very focused in class, and saddened by the separation from the applicant. The record further includes a letter from the coach of a youth soccer team which relates how the applicant's spouse tried to help her son get on the soccer team, and the emotional effect to the son resulting from his inability to join the team. The record indicates that these circumstances are causing further stress to the applicant's spouse.

The record establishes that if the waiver application were denied, the applicant's spouse would experience financial and emotional hardship as a result of loss of the applicant's separation from the family. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if she remained in the United States without the applicant.

The record further indicates that the applicant's spouse would experience hardship were she to relocate to Albania or to Italy to be with the applicant. The psychological evaluation in the record states that all members of the applicant's spouse's immediate family reside in Canada. The applicant's spouse states her parents live in Toronto, Ontario, Canada, and that both parents are elderly and ill. The applicant's spouse's father has severe arthritis in his back and hip, diabetes, and prostate cancer. The applicant's spouse's mother has severe arthritis of her knees. Although the applicant's spouse does not live with her parents, and they live approximately 200 miles from the applicant's spouse's residence in Michigan, the applicant's spouse states that if she were to relocate back to Europe, she would not be able to afford to see them, or to assist them in any way if their health becomes worse. Thus, the applicant has established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Albania or Italy to reside with the applicant.

The AAO thus 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-Morales*, 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 lawful permanent resident spouse and two lawful permanent resident children would face if the applicant were to reside in Albania or Italy, regardless of whether they accompanied the applicant or remained in the United States; the applicant's apparent lack of a criminal record; letters of concern and support written on behalf of the applicant's spouse in the United States; and the passage of more than 10 years since the applicant's misrepresentation in attempting to enter the United States. The unfavorable factor in this matter is the applicant's attempt to unlawfully enter into 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.