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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]

A5

Date: SEP 21 2012

Office: DETROIT

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 F. Rhew

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Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Detroit, Michigan. The matter 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 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 using a false name with an Italian passport. The applicant does not contest this finding of inadmissibility, but rather 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 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*, dated May 7, 2010.

The record contains the following documentation: a statement by the applicant's attorney on the Form I-290B, Notice of Appeal or Motion;¹ briefs and statements submitted by the applicant's attorney in support of the applicant's Applications for Waiver of Grounds of Inadmissibility (Forms I-601); statements from the applicant's wife; a statement from the applicant's mother; medical records; a psychological evaluation of the applicant's wife; financial documentation; and letters of reference. 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 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

¹ The Form I-290B, Notice of Appeal or Motion, indicated that counsel would submit a brief and/or additional evidence to the AAO within 30 days. However, no brief or additional evidence was received by the AAO, thus the record is considered complete.

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. The applicant's U.S. citizen spouse and the applicant's lawful permanent resident mother are the only qualifying relatives 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-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 will suffer financial hardship if the applicant’s waiver application is not approved. The record includes a copy of the 2007 federal income tax return for the applicant’s spouse and a 2007 W-2 form, indicating that the annual income for the applicant’s spouse in 2007 was \$[REDACTED]. The record also contains a 2008 employment letter for the applicant’s spouse from her former employer, indicating that she earned an annual salary of [REDACTED]. The applicant’s spouse subsequently left this position, and took a position at [REDACTED]. The record includes a copy of the 2008 federal income tax return for the applicant and the applicant’s wife, and copies of pay stubs from 2009 for the applicant’s spouse at [REDACTED]. In a letter in support of the applicant’s Form I-601, the applicant’s attorney states that the applicant’s spouse was on a leave of absence from her position at [REDACTED] for the birth of her child, and that she would be returning to part-time employment at [REDACTED] following the leave of absence. The record includes a copy of the leave of absence packet signed by the applicant’s spouse. A psychological report in the record states that upon becoming pregnant, the applicant’s spouse was unable to maintain her full time position at [REDACTED] and had to take a lower position as a cashier working part-time. The applicant’s spouse states that after her leave of absence, she would return to work at [REDACTED] but would only make \$7.40 an hour and would only be allowed to work 15 to 20 hours per week, thus only earning up to [REDACTED] per week. The record indicates that the qualifying relative would face financial hardship if the applicant’s waiver is not approved, as she would be unable to meet the financial obligations for her and her son in the applicant’s absence.

The record further includes a psychological evaluation for the applicant’s spouse, which diagnoses the applicant’s spouse as having depression and generalized anxiety disorder. The evaluation states that the results of the evaluation suggest that the applicant’s spouse has a high degree of emotionality

as well as emotional decompensation, and that the presence of the two disorders, depression and anxiety, escalate as the applicant's spouse fears separation from the applicant. The psychological evaluation further indicates that at the time the applicant's spouse was evaluated, she was concerned about her ability to adequately care for the child without the applicant, and that this was affecting her psychological state. The applicant's spouse states that she fears that she would not be able to raise her son by herself, the applicant is her source of emotional, physical, and financial support, and her fear of raising her child alone is contributing to her anxiety and depression.

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 income and support, and the hardship she would face over her concerns about raising her son. 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 to be with the applicant. The applicant's spouse was born in the United States, all her family resides in the United States, and she does not speak the Albanian language. In addition, there are indications in the record that the applicant's spouse takes care of her aging grandmother, who lives with the applicant and the applicant's spouse. The mother of the applicant's spouse lives in the United States, and has been diagnosed with Lupus. The record therefore establishes that if the waiver application were denied, the hardships that the applicant's spouse would face were she to relocate to Albania, when considered in the aggregate, rise to the level of extreme.

The AAO thus finds that the situation presented in this application rises to the level of extreme hardship.² 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

² As the AAO has found that the applicant's wife would suffer extreme hardship if the waiver application is not approved, there is no need to address the hardship concerns being experience by the applicant's other qualifying relative, his mother.

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 to the applicant's U.S. citizen spouse and son if the applicant were to reside in Albania, regardless of whether they accompanied the applicant or remained in the United States; the hardship to the applicant's lawful permanent resident mother if she were to be separated from her son; letters of concern and support written on behalf of the applicant; and the passage of more than 10 years since the applicant's misrepresentation in attempting to enter the United States. The unfavorable factors in this matter are the applicant's encounters with United States law enforcement in a traffic violation and a disorderly conduct charge which was dismissed, and 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 his 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.