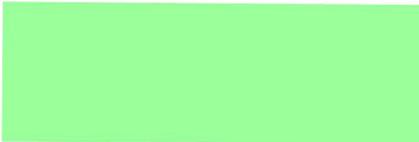


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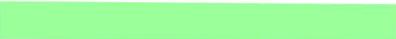
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



Date: **APR 10 2013**

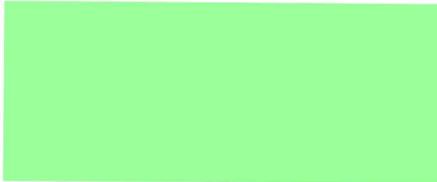
Office: JACKSONVILLE, FL

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (the 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Jacksonville, Florida. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the underlying waiver application will be granted.

The record reflects that 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 for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and is the son of U.S. citizen parents. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and parents in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. The AAO dismissed the appeal, finding that although the applicant established that his wife would suffer extreme hardship if she relocated to Albania, there was insufficient evidence in the record to show that she would suffer extreme hardship if she remained in the United States. The AAO also found that neither of the applicant's parents would suffer extreme hardship if his waiver application were denied.

On appeal, counsel contends, among other things, that the AAO failed to consider the favorable factors in the applicant's case and failed to consider an AAO decision in a similar case which granted the applicant's waiver application. Counsel contends there were factual and legal errors in the AAO's decision denying the applicant's waiver application.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, counsel has submitted a brief and additional new documentary evidence to support the applicant's waiver application. The applicant's submission meets the requirements of a motion to reopen and reconsider. Accordingly, the motion is granted.

In addition to the documents specified in the AAO's previous decisions, the record also contains, *inter alia*: a copy of an AAO decision dated July 10, 2012; an updated letter from the applicant; an updated letter from the applicant's wife, [REDACTED] a letter from [REDACTED] physician; copies of the applicant's parents' naturalization certificates; updated letters from the applicant's parents; letters from the applicant's mother's physicians; copies of medical records; a letter from the

applicant's grandparents and letters from their physicians; a letter and a memorandum from the applicant's brother; and letters of support.

Counsel's contention that the AAO committed legal error because it did not refer to, or rely on, another AAO case is unpersuasive. As noted in the AAO's prior decision, extreme hardship necessarily depends upon the facts and circumstances peculiar to each case and no two cases present the same circumstances. *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). The decision counsel relies on was not, contrary to counsel's assertion, an AAO precedent decision. While it may have been made available to the public, it was not published pursuant to 8 C.F.R. § 103.3(c) and is, therefore, only binding on the particular case addressed in that decision. Similarly, counsel's contention that the AAO committed legal error by allegedly calling into question [REDACTED] character by evaluating whether she would suffer extreme hardship if she remained in the United States, is without merit. Caselaw establishes that extreme hardship be found only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation, and it has long been acknowledged that separation from the applicant or relocation are a matter of choice and not the result of inadmissibility. *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). The sentence in the AAO decision which counsel refers to was a reference to the finding in *Matter of Ige*, used in conjunction with other precedent decisions, to support the broader legal concept of separation.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien . . . .

In this case, the AAO had found that in 2000, the applicant attempted to enter the United States using a fraudulent passport and was refused entry into the United States. The AAO further found

that the applicant entered the United States in March 2001 using another individual's passport when he was nineteen years old. On motion, counsel contends that the 2000 incident cannot be counted against the applicant because he was caught in Aruba, placed in jail, and, therefore, never appeared at the U.S. border or port of entry. With respect to the 2001 entry, counsel contends that the applicant was actually eighteen years old, not nineteen years old.

The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. See Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

With respect to the 2000 attempted entry into the United States, it is well established that fraud or willful misrepresentation of a material fact in the procurement or attempted procurement of a visa, or other documentation, must be made to an authorized official of the United States Government in order for excludability under section 212(a)(6)(C)(i) of the Act to be found. See *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I & N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961). There is no requirement that the applicant must appear at the U.S. border or port of entry. In this case, the record shows that the applicant was inspected by U.S. immigration officials in Aruba, was found to have presented a fraudulent Slovenian passport issued to "[REDACTED]" and was turned over to Aruban immigration officials. In addition, according to a new letter submitted by the applicant on motion, he concedes he was "attempt[ing] to enter US through Aruba" using a fraudulent passport. The fact that, according to the applicant, "it never materialized" does not invalidate the applicant's willful misrepresentation of a material fact to a U.S. immigration official in order to obtain an immigration benefit. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for his attempted entry into the United States in 2000.

The applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act for his actual entry into the United States in 2001 using a fraudulent passport. With respect to counsel's contention that the AAO did not properly consider counsel's initial brief on appeal because "the Decision alleges that the undersigned counsel made a mistake by alleging that the applicant was seventeen (17) years old at the time of entry," the AAO clarifies that the misrepresentation in question was the applicant's attempted entry in 2000, not the applicant's actual entry into the United States in 2001. The AAO was directly addressing paragraph 57 of counsel's initial brief on appeal, which states:

The USCIS denied the Form I-601, citing that one of the factors considered in weighing the adverse evidence is that the Applicant had previously attempted to enter the U.S. through the use of a different fraudulent passport in 2000. In 2000, the

Applicant was 17 (seventeen) years old, and therefore his use of a fraudulent passport in 2000 should not be considered against him. He was a legal minor at the time in 2000.

*Brief in Support of Form I-290B, Notice of Appeal to the Administrative Appeals Unit for a Decision Denying Applicant's Form I-601* at 7, ¶57, dated October 25, 2011. As stated in the AAO's previous decision, neither the statute nor caselaw excuses a willful misrepresentation made by a minor. *Cf. Malik v. Mukasey*, 546 F.3d 890, 892-893 (7<sup>th</sup> Cir. 2008) (holding that two 17-year-old brothers whose father had misrepresented their identities, nationality, and religious affiliation when he listed them as derivatives on his asylum application, could be held accountable for that fraud). Therefore, the applicant's attempted entry in 2000, as well as the applicant's actual entry in 2001, both render him inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO acknowledges that the record shows the applicant was eighteen years old, not nineteen years old, when he entered the United States using a fraudulent passport but finds this to be harmless error. Based on the facts in the record, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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.

After a careful review of the entire record, the AAO finds that the applicant’s wife, [REDACTED] will suffer extreme hardship if the applicant’s waiver application were denied. The AAO previously found that if [REDACTED] relocated to Albania to be with her husband, she would experience extreme hardship. The AAO will not disturb that finding. That AAO also finds that if [REDACTED] remains in the United States, she would suffer extreme hardship. An updated letter from [REDACTED] states that her depression and anxiety have worsened significantly. According to [REDACTED] she suffers from severe panic attacks almost daily, is paranoid about safety when she is apart from her husband, and suffers from persistent night terrors and insomnia. She contends she has difficulty catching her breath and breathing, feels like her heart is going to beat out of her chest, gets spots in her vision, and feels the room spin. She states there are some days when she lays in bed for hours, too helpless to move, and that she has lost over twenty-five pounds because she does not have any appetite at all. A new letter from her physician confirms [REDACTED] significant weight loss in the last year, and states that her depression, anxiety, and insomnia have become overwhelming to the point that the physician can no longer adequately treat her. The physician states that [REDACTED] brought the decision denying of her husband’s waiver application to the physician’s office and that [REDACTED] was inconsolable. The physician referred [REDACTED] to a psychiatrist and the record shows [REDACTED] has an appointment with a counseling center. Considering this new evidence of [REDACTED] emotional and psychological problems, combined with her ongoing fertility issues and diagnosis of severe Polycystic Ovary Syndrome (PCOS), considering the unique

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factors of this case cumulatively, the AAO finds that the hardship [REDACTED] would suffer if she remains in the United States is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

As the AAO has found extreme hardship to the applicant's spouse there is no purpose in examining extreme hardship to his parents.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit on two separate occasions, and periods of unauthorized presence and employment. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including his U.S. citizen wife and parents; the hardship to the applicant's entire family if he were refused admission; letters of support describing the applicant as respectful, compassionate, trustworthy, and a brilliant businessman; and the applicant's lack of any arrests or criminal convictions in the United States.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

**ORDER:** The motion will be granted and the underlying waiver application is approved.