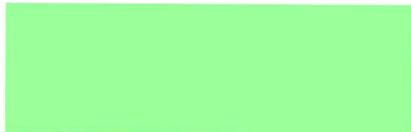




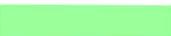
**U.S. Citizenship
and Immigration
Services**

(b)(6)



Date: **APR 17 2013**

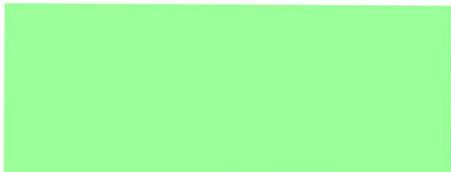
Office: NEW YORK

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:



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".

for
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The record establishes 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure a visa, other documentation or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. Specifically, the applicant attempted to procure entry to the United States in 1999 by presenting fraudulent documentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States with her U.S. citizen spouse and children and her lawful permanent resident parents.

The district 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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated June 9, 2011.

On appeal, counsel for the applicant submits the following: a brief; biographical documentation pertaining to the applicant's family; immigration documentation; affidavits from the applicant and her spouse; medical and mental health documentation pertaining to the applicant's spouse; affidavits and medical documentation pertaining to the applicant's and her spouse's parents; academic documentation pertaining to the applicant's children; financial documentation; support letters; and country conditions information for Albania. In addition, in February 2013, the AAO received documentation establishing the applicant's and her spouse's purchase of a home. The entire record was reviewed and considered in rendering this decision.

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.

....

- (ii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) 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.

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 lawful permanent resident parents are the only qualifying relatives in this case. Hardship to the applicant, the children, born in 2001 and 2004, or her in-laws can be considered only insofar as it results in hardship to a 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 v. INS*, 138 F.3d 1292, 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 U.S. citizen spouse asserts that he will suffer emotional and financial hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility. In a declaration he first explains that he needs his wife by his side and long-term separation from her would cause him hardship. He further notes that country conditions in Albania are problematic and he worries about his wife’s well-being were she to return to her home country. Moreover, the applicant’s spouse details that due to his fears with respect to being separated from his wife, he is suffering from Major Depressive Disorder and is being treated by a psychiatrist. The applicant’s spouse also references the hardships his daughter will experience without their mother’s daily presence, thereby causing him hardship. Further, the applicant’s spouse explains that he is the sole financial provider for the family while his wife cares for the children but were she to relocate abroad, he will be a single father and will suffer having to financially provide for the family while properly raising his daughters and his elderly parents who reside with him. Finally, the applicant’s spouse explains that his wife will not be able to obtain gainful employment in Albania and consequently, having to support two households will cause him further financial hardship. *Affidavit from* [REDACTED] dated June 29, 2011.

In support, documentation has been provided establishing that as a result of having to face his wife’s relocation abroad, the applicant’s spouse is suffering from Major Depressive Disorder and anxiety, has been prescribed Lexapro, an antidepressant, Xanax, a tranquilizer, and Sonata, a sleep aide, and is being treated with cognitive-behavioral psychotherapy. *See Letter from* [REDACTED] dated June 22, 2011. In addition, documentation has been provided establishing that the applicant’s spouse is the sole financial provider for the family while the applicant cares for the two children. *See Form 1040, U.S. Individual Income Tax Return*. Further, a letter has been provided from the

applicant's spouse's father, explaining that he lives with the applicant and her husband and relies on the applicant for his daily care due to his numerous medical problems. *Affidavit of* [REDACTED] dated August 2, 2010. Moreover, the U.S. Department of State confirms that Albania's per capita income is among the lowest in Europe. *See Country Specific Information-Albania, U.S. Department of State*, dated February 27, 2012. The record reflects that the cumulative effect of the emotional and financial hardship the applicant's spouse would experience due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, the applicant's spouse would suffer extreme hardship if he remains in the United States.

With respect to relocating abroad, the applicant's spouse explains that he would experience emotional and financial hardship. To begin, the applicant's spouse details that he became a permanent resident of the United States in 1999 and long-term separation from his community, his home, his parents, who reside with him, and his gainful employment would cause him hardship. Further, the applicant's spouse details that were he to relocate to Albania, he would not be able to receive affordable and effective treatment for his mental health issues. Moreover, the applicant's spouse details that the economy is very bad in Albania and he will not be able to obtain gainful employment to support himself and his family. Further, the applicant's spouse maintains that his daughters would experience hardship in Albania as they are unfamiliar with the country, culture, customs and language, thereby causing him hardship. Finally, the applicant's spouse references crime and violence in Albania. *Letter from* [REDACTED] dated August 5, 2010.

The record establishes that the applicant's spouse has been residing in the United States for over a decade, lives with his parents, and has no current ties to Albania. Moreover, the record indicates that the applicant's spouse has been gainfully employed for many years, earning over \$50,000 per year. Were he to relocate abroad, the applicant's spouse would have to leave his extended family, his gainful employment, his friends, his community, his home, and the mental health professionals familiar with his medical history and treatment plan. He would also be concerned about the substandard economy and its impact on her quality of living. Finally, the record establishes that the applicant's children, most notably his daughter [REDACTED], is fully integrated into the United States lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a fifteen-year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). The AAO finds *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern. To uproot the applicant's children at this stage of their education and social development and relocate them to Albania would constitute extreme hardship to them, and by extension, to the applicant's spouse, the only qualifying relative in this case. The AAO thus concurs with the director that it has been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the

applicant unable to reside in the United States.¹ Accordingly, the AAO 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 hardship the applicant's U.S. citizen spouse and children and his parents and in-laws would face if the applicant were to relocate to Albania, regardless of whether they accompanied the applicant or stayed in the United States; support letters; community ties; home ownership; the payment of taxes; the apparent lack of a criminal record; and the passage of more than ten years since the applicant's fraud or willful misrepresentation. The unfavorable factors in this matter are the applicant's fraud or willful misrepresentation, as outlined above, and periods of unlawful presence while in the United States.

¹ As the AAO has determined that extreme hardship exists with respect to the applicant's U.S. citizen spouse were the applicant unable to reside in the United States due to her inadmissibility, it is not necessary to evaluate whether the applicant's lawful permanent resident father and/or mother would experience extreme hardship were the applicant unable to reside in the United States due to her inadmissibility.

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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 I-601 waiver application approved.

ORDER: The appeal is sustained. The waiver application is approved.