

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

(b)(6)

Date: APR 25 2013

Office: VIENNA, AUSTRIA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(d)(11) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i) and 1182(d)(11)

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you

Ron Rosenberg
for
Ron Rosenberg
Acting 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 dismissed.

The applicant is a native and citizen 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),¹ for seeking to procure admission to the United States through fraud or misrepresentation, and under section 212(a)(6)(E) of the Act, 8 U.S.C. § 1182(a)(6)(E), for having knowingly encouraged, induced, assisted, abetted or aided another alien to enter to enter the United States in violation of the Act. The record indicates that the applicant assisted his daughter to illegally enter the United States through the purchase of a fraudulent Belgian passport containing an F-1 non-immigrant student visa, rendering him inadmissible under section 212(a)(6)(E) of the Act. The applicant knowingly concealed this assistance to his daughter when applying for his immigrant visa, which is a misrepresentation of a material fact, rendering him inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(d)(11) of the Act to reside in the United States with his U.S. citizen spouse and daughter.

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 Inadmissibility (Form I-601) accordingly.¹ *See Decision of the Field Office Director, May 3, 2012.*

The record contains the following documentation: a brief submitted by counsel in support of the Form I-290B, Notice of Appeal or Motion; a letter by counsel in support of the Form I-601, Application for Waiver of Ground of Inadmissibility; two letters from the applicant's former counsel in support of Forms I-601; statements from the applicant, the applicant's spouse, the applicant's daughter, the applicant's son, and the applicant's son-in-law; medical documentation for the applicant's spouse; and country conditions information on Albania. The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant's attorney requests oral argument on appeal. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. USCIS has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

¹ The record indicates that the field office director, Vienna, Austria, previously denied two Forms I-601, Application for Waiver of Ground of Inadmissibility, which were filed by the applicant. The first decision of the field office director, dated January 29, 2010, was denied because, at that time, the applicant did not have a qualifying relative in the United States. The second decision, dated February 22, 2011, was denied as the field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative.

- (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.

On appeal counsel contends that the applicant did not knowingly help his daughter to purchase a passport to enter the United States illegally. In counsel's letter in support of the Form I-601, Application for Waiver of Ground of Inadmissibility, dated on November 26, 2011, counsel states that the applicant was not part of a scheme to purchase a fraudulent passport for the applicant's daughter.

The record indicates that the applicant stated under oath to a U.S. Consular Official that he helped his daughter purchase a fraudulent Belgian passport containing an F-1 nonimmigrant student visa for the United States in order to assist her to go to the United States.

The applicant submitted two statements. In the first statement, dated December 17, 2009, the applicant stated that he agreed to his daughter traveling to the United States and that he contributed financially to her traveling, while not thinking that he was breaking the law. In a second statement, dated July 5, 2011, the applicant stated that his daughter asked him to help her financially so that she could go to the United States, but that he did not know how she was going to use the money. Both statements are contradicted by evidence in the record that he stated under oath that he helped his daughter to purchase a fraudulent passport with the U.S. visa.

The applicant's daughter also submitted two statements. In the first statement, dated November 24, 2009, the applicant's daughter states that the applicant helped her to find a way to leave Albania. In the second statement, the applicant's daughter stated that the applicant helped her to come to the United States, but that the applicant did not know that she used the money to purchase a passport until later. Again, the statement is contradicted by the applicant's sworn testimony that he helped his daughter to purchase a fraudulent passport with the U.S. visa.

Although the assertions of the applicant and the applicant's daughter are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Section 291 of the Act, 8 U.S.C. § 1361, states that whenever any person makes an application for admission, the burden of proof shall be upon such person to establish that he is not inadmissible

under any provision of this Act. The burden never shifts to the government to prove admissibility during the adjudication of a benefit application, including an application for a waiver. INA § 291; *Matter of Arthur*, 16 I&N Dec. 558 (BIA 1976). The applicant has not met his burden.

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 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. 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1993), (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.

Counsel contends that the applicant’s spouse will suffer financial, medical, and psychological hardship if the applicant’s waiver application is not approved and she is separated from the applicant.

The record indicates that the applicant’s spouse suffers from several medical conditions. A letter from a physician dated June 3, 2011, states that the applicant’s spouse is being treated for chest pain, hypertension, hypothyroidism, and depression. Further medical documentation in the record indicates that on May 24, 2010, the applicant’s spouse was seen by a doctor for her hypothyroidism, and was prescribed with Levothyroxine.

With respect to the psychological hardships of the applicant’s spouse, the record includes documentation which indicates that the applicant’s spouse was admitted to the hospital in June 2011,

and was treated for anxiety reaction and chest pain, and was prescribed with Ativan, a drug which is used for the short-term treatment of anxiety and insomnia. The record also includes a progress note from a neurologist from the same time, indicating that the applicant's spouse suffers from depression and anxiety disorder, and was prescribed with Seraquil. The record further indicates that the applicant and the applicant's spouse were married in 1978, and thus have been in a marital relationship for 35 years.

Counsel contends that the applicant's spouse will suffer financial hardship if the applicant's waiver application is not approved. In a statement dated June 10, 2010, the applicant's spouse states that she worked for a couple weeks to support herself. Counsel contends that the applicant is currently able to provide for himself but is unable to support his spouse in the United States. However, there is no financial documentation in the record to support these contentions. In addition, the record does not contain any evidence regarding any financial support that the applicant's two children residing in the United States are able to provide to the applicant's spouse. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

While the record fails to establish that the applicant's spouse would suffer financial hardship if the waiver application were denied, the record does show that the applicant's spouse would experience medical and psychological hardship if she is separated from the applicant. 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.

In regard to relocation, the AAO notes that the applicant's spouse was born in Albania and resided there until 2010, and the record does not establish she would have difficulty readjusting to her life in Albania. Counsel contends that relocation of the applicant's spouse permanently to Albania is not a viable option, stating that it is not feasible at this time for the applicant's spouse to relocate to Albania. In support of this contention counsel states that the applicant's spouse is currently under medical care, and that returning to Albania will cause her to lose her U.S. resident status and her ability to be with her children and grandchildren. However, there is no evidence in the record to support the contention that medical treatment for the applicant's spouse's conditions is not available in Albania. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Based on the evidence on the record, the applicant has not established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Albania to reside with the applicant.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if separated from the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative

in the scenario of separation *and* the scenario of relocation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The applicant was also found to be inadmissible under section 212(a)(6)(E)(i) of the Act. Section 212(a)(6) of the Act states, in pertinent part:

(E) Smugglers – (i) in General. – Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

The applicant is eligible for consideration for a waiver under section 212(d)(11) of the Act. However, the AAO has found that the applicant has not established eligibility for a waiver under section 212(i) of the Act as he has not established extreme hardship to a qualifying relative. As the applicant is inadmissible under section 212(i) of the Act, no purpose would be served in granting the applicant a waiver under section 212(d)(11) of the Act.

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden. Accordingly, the appeal will be dismissed

ORDER: The appeal is dismissed. The waiver application is denied.