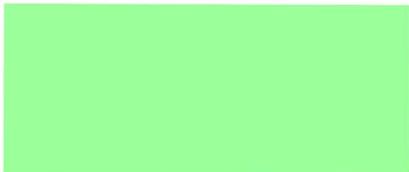


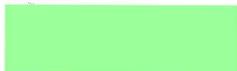


U.S. Citizenship
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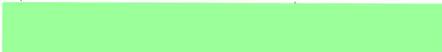
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DATE: JAN 02 2013 Office: VIENNA, AUSTRIA

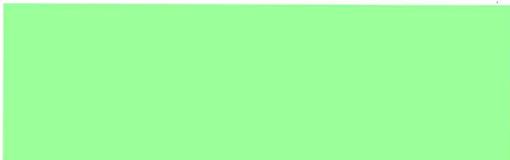


IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v).

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", with a long horizontal flourish extending to the right.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

(b)(6)

DISCUSSION: The waiver application was denied by the Field Office Director, Vienna, Austria, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a 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), gaining admission to the United States through willful misrepresentation, and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of her last departure. She is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on December 20, 2010.

On appeal, counsel for the applicant states that the Field Office Director's decision was erroneous as a matter of law because the applicant is not inadmissible for misrepresentation, and also states that the record contained sufficient evidence to establish that the applicant's spouse would experience extreme hardship. *Form I-290B*, received January 18, 2010.

The record contains, but is not limited to, the following documents: briefs and statements from counsel for the applicant; statements from the applicant's spouse; a statement from the applicant; copies of tax returns and other business documents related to the applicant's spouse's construction company; significant amounts of country conditions materials on Albania; statements made by [REDACTED] pertaining to the mental health of the applicant's spouse; a statement by [REDACTED], pertaining to the mental health of the applicant's spouse, dated April 28th, 2010; and copies of school records of the applicant's spouse's brother. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

- (i) 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 chapter is inadmissible.

The record indicates that the applicant presented an Italian passport in the name of another person when entering the United States on March 14, 2002, and thus entered the United States by materially misrepresenting her identity.

Counsel and the applicant now assert on appeal that it was the applicant's mother who obtained the fraudulent passport used by the applicant to enter the United States when she was a minor, and that it was the applicant's mother who carried their documents. Counsel asserts that the applicant was ignorant of any attempts to enter the United States illegally. *Brief in Support of Appeal*, February 18, 2011. Counsel previously contended, however, that the applicant had entered the United States by presenting a boarding pass and fraudulent Italian passport in the name of another person, and that the applicant had been inspected by an Immigration Officer and "admitted" for the purposes of section 101(A)(43) of the Act based on her false identity. See Motion to Reconsider and Reopen Denied I-485 Application, dated November 7, 2007. Counsel's assertion that the applicant, at the age of 17, would not understand that she was committing a misrepresentation when answering questions during her inspection such as confirming her name, identity, or purpose for travelling to the United States is not persuasive. Further, it is the applicant's burden to establish eligibility in these proceedings. In this case the record contains insufficient support or documentation to show that it was the applicant's mother who presented any documents and not the applicant who was inspected and interviewed by an Immigration Officer, making her aware of the false name and passport. The fact that the applicant's mother filed an Asylum application listing her as a derivative minor does not establish that it was not the applicant who presented a fraudulent passport to gain entry into the United States.

Further, with regard to the applicant's age and the ability to form intent necessary to constitute a misrepresentation at the time she presented her fraudulent passport (or even in a light most favorable to applicant, where an agent - her mother - presented a passport for her), the AAO finds that the applicant, at the age of 17 and having previously travelled, would not be incapable of understanding the misrepresentation and forming intent, and that based on her travel history and living situation she was more than capable of understanding the use of a false name and passport. See, e.g., USCIS Adjudicator's Field Manual § 40.6.2(c)(1)(C)(i) (providing that those who are incapable of independently forming an intent to defraud, such as the mentally incompetent or small children, should not be deemed inadmissible under section 212(a)(6)(C)(i) of the Act, if applications submitted on their behalf contain false representations).

In light of these observations, the AAO does not find counsel's assertion persuasive. Therefore the applicant has not shown that she was erroneously deemed inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, and she requires a waiver under section 212(i) of the Act.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

.....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such

alien's departure or removal from the United States, is inadmissible.

The record indicates that the applicant entered the United States with the passport of another person on October 14, 2002, and remained until she was deported on June 12, 2008. Therefore, the applicant was unlawfully present in the United States for over a year from October 14, 2002, until June 12, 2008, and is now seeking admission within 10 years of her last departure from the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(i) of the Act provides, in pertinent part:

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under sections 212(a)(9)(B)(v) and 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 an applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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.

Counsel for the applicant asserts the applicant's spouse would experience physical, emotional and economic hardships upon relocation to Albania. *Brief in Support of Appeal*, received February 17, 2011. The applicant's spouse has also submitted a statement detailing the impacts he would experience upon relocation. Counsel explains that the country conditions in Albania include high unemployment, high crime rates, lack of adequate health care facilities and disruptions in basic amenities such as power and water. He further explains, as discussed by the applicant's spouse in his letter, that the applicant's spouse's parents, brother and other family members reside in the United States and depend on the applicant's spouse's business for income and financial support. He states the applicant's spouse no longer has any significant ties to Albania, and that he would experience a separation impact from his U.S. family members because he would be unable to relocate them to Albania. Counsel further explains that, due to the conditions Albania, the applicant's spouse would fear for his safety and he would likely have to serve a government imposed mandatory term in the Albanian armed forces if he returned.

Counsel cites specific passages in the 2009 U.S. State Department's Country Report for Albania, as well as travel warnings and other documents, as evidence of the deteriorated conditions in Albania. These materials specifically discuss the conditions in Albania, a small country with few major cities and struggling to recover from recent conflicts, and are sufficiently probative to establish that the conditions in Albania would likely result in substantial physical impacts on the applicant's spouse. In addition, evidence in the record indicates the applicant's spouse could be subject to a mandatory term of military service upon his return. Based on the support provided by this evidence, the AAO concludes that the applicant's spouse would experience uncommon physical challenges and difficulty readjusting upon relocation to Albania.

The record contains documentation corroborating the presence of the applicant's spouse's family members in the United States. The operation of a company owned by the applicant's spouse is also documented, including business records and tax documentation which indicate the company's returns have declined since the applicant departed. There is also evidence documenting the applicant's spouse's brother's registration in college classes, although it does not confirm that the applicant's spouse is the one who paid for the college tuition. Although evidence corroborating the financial dependence of the applicant's spouse's parents on his company is not extensive, when the totality of the evidence submitted concerning these issues is examined, it appears more likely than not that the applicant's spouse would experience an uncommon financial impact from having to close the company which some of his relatives may rely on in order to relocate.

The AAO also acknowledges the presence of the applicant's spouse's family members in the United States, representing a separation impact if he relocated, and recognizes as well the lack of family ties

or connections to Albania. When these impacts are considered in the aggregate, the AAO finds them sufficient to establish the applicant's spouse would experience uncommon impacts rising to the level of extreme hardship.

With regard to hardship due to separation, counsel asserts the applicant's spouse will experience extreme emotional hardship, as well as physical and financial hardship. *Brief in Support of Appeal*, received February 17, 2011. Counsel explains that the applicant's spouse has been suffering Major Depression due to the applicant's inadmissibility and that the emotional impact on him has reduced his ability to effectively manage the construction business on which he and his family depend. He states that the physical impact of having to manage the family business and travel back and forth to Albania to visit the applicant results in a physical hardship to him. Counsel further asserts that the applicant's spouse has experienced a financial impact because the applicant's inadmissibility has affected his ability to run his construction business.

The record includes numerous psychological assessments of the applicant's spouse. Two reports from [REDACTED] conclude that the emotional impact on the applicant's spouse has resulted in Major Depression. *Statements of [REDACTED]*, dated July 14, 2008, and April 2010. A report from [REDACTED], concludes that the applicant's spouse was suffering from depressive symptoms and prescribed medications to treat him. The applicant's spouse has also asserted that he is worried for the physical safety of the applicant, and has spent time travelling back and forth to Albania. Based on this evidence, the AAO finds the record to indicate the applicant's spouse would experience uncommon emotional difficulty due to separation from the applicant.

With regard to financial impact, the applicant's spouse has asserted that the applicant's inadmissibility and having to travel back and forth to Albania has severely impacted his business. *Statement of the Applicant's spouse*, received July 20, 2010. He has also stated that he has struggled to support his parents financially, pay for his brother's college tuition and support the applicant in Albania. While the record does not contain any direct evidence to support the applicant's spouse's assertions, there are a number of tax returns which show declining income since the year of the applicant's deportation, as asserted by the applicant's spouse. The AAO finds that a preponderance of the evidence indicates the applicant's spouse would experience a financial impact due to the applicant's departure.

When the hardship factors on appeal are considered in the aggregate, the AAO finds them to rise above the common impacts of separation to a degree of extreme hardship. Accordingly, the applicant has shown that a qualifying relative will endure extreme hardship should the present waiver application be denied, as required by sections 212(a)(9)(B)(v) and 212(i) of the Act. Although the applicant has established that a qualifying relative will experience extreme hardship, it must still be determined whether she warrants a waiver as a matter of discretion.

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).

(b)(6)

In evaluating whether section 212(h)(1)(B) 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-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 AAO finds that the unfavorable factors in this case include the applicant's misrepresentation, unlawful presence and unauthorized employment. The favorable factors in this case include the presence of the applicant's spouse, the hardship the applicant's spouse would experience as a result of the applicant's inadmissibility, and the lack of any criminal record while residing in the United States. The record also indicates that the applicant's mother is now a U.S. citizen, and that the applicant is her only daughter. In light of this, the AAO will give some favorable consideration to the presence of the applicant's mother. Although the applicant's misrepresentation, unlawful presence and unauthorized employment are serious violations of immigration law, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised. The field office director's decision will be withdrawn and the appeal will be sustained.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.