



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JAN 16 2013**

Office: VIENNA, AUSTRIA

FILE: [REDACTED]

IN RE: [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).

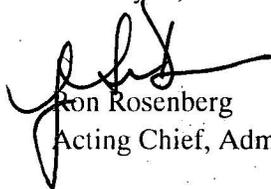
ON BEHALF OF APPLICANT:
[REDACTED]

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.

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, or a request for a fee waiver. 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,


Jon Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Vienna, Austria, and 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 Kosovo 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), for seeking to procure an immigration benefit through fraud or misrepresentation. The applicant is the spouse of a lawful permanent resident and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The field office director concluded that the applicant failed to establish that a denial of his waiver application would result in extreme hardship to his spouse and denied the application accordingly. *See Decision of the Field Office Director* dated March 30, 2012.

On appeal, the applicant, through counsel, claims that the applicant's spouse would face extreme hardship due to the applicant's inadmissibility. *See Appeal Brief*. Specifically, counsel notes the applicant's spouse's mental health condition, financial circumstances, her refusal to relocate to Kosovo and desire to be reunited with the applicant in the United States. *Id.*

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:

- (1) The Attorney General [now Secretary of Homeland Security (the Secretary)] may, in the discretion of the [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 [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.

In the present case, the record reflects that the applicant was found to be inadmissible because he sought admission to the United States in 2003 using a fraudulent passport. The applicant does not dispute this finding. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.¹

The Act provides that a waiver of inadmissibility, under section 212(i) is dependent first upon a showing that the admissibility bar imposes an extreme hardship on a U.S. citizen or lawful permanent resident spouse or parent. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The applicant's case is based on a claim of extreme hardship to his lawful permanent resident spouse. The record contains references to hardship that the applicant's U.S. citizen daughter would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for purposes of a waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's qualifying relative.

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 of Immigration Appeals (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.

¹ The applicant also mentions his potential inadmissibility under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for having been previously removed from the United States. This is not the inadmissibility ground addressed in the field office director's denial or the U.S. consulate's refusal worksheet. Moreover, the record does not contain any evidence of an order of removal. Thus, the AAO will only determine the applicant's eligibility for a waiver of the fraud grounds of inadmissibility under section 212(i) of the Act.

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. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 record in this case contains, in relevant part, an appeal brief, a statement signed by the applicant's spouse, a psychological report addressing the applicant's spouse's circumstances, the applicant's waiver application, a lease agreement, and financial records relating to the applicant's spouse.

The applicant's spouse is a citizen of Kosovo who obtained asylum in the United States and has been residing here since 1998. She became a lawful permanent resident in 2007. The couple was married in Germany in August 2000, and their daughter was born in New York in June 2001. The applicant's spouse shares an apartment in New York with her daughter and brother. She has two sisters who are also lawful permanent residents of the United States. Her mother and a third sister live in Norway. The psychological report submitted by [REDACTED], Psy.D., indicates that the applicant's spouse suffers from major depressive disorder and anxiety. She also notes that the applicant's spouse's medical condition includes hypertension and high cholesterol. The financial documentation submitted indicates that the applicant's spouse earns about \$18,000 per year.

The evidence in the record, considered either individually or in the aggregate, does not demonstrate that the applicant's spouse would face extreme hardship should the applicant's waiver application be denied.

The record suggests that the applicant's spouse does not wish to relocate to Kosovo. The applicant's spouse states that she is concerned about her daughter's educational opportunities and culture shock. She is also concerned about the political, economic and social situation in Kosovo. A "lower standard of living [] and the difficulties of readjustment to [another] culture and environment . . . simply are not sufficient" to establish extreme hardship. *See Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986). A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. at 886. Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). The AAO finds that the evidence submitted does not support the applicant's claim that relocation to Kosovo would result in extreme hardship to his spouse.

The record also does not establish that the applicant's spouse would face extreme hardship should she remain in the United States separated from the applicant. The record indicates that the applicant's spouse is employed and financially independent from the applicant. She resides with her daughter and brother, and near two other siblings. The AAO acknowledges the difficulties faced by the applicant's spouse in being the primary caregiver for the couple's child, and the potential relief that the applicant's presence in the United States would bring. The AAO also considers the applicant's spouse's mental health and medical conditions. The psychological report contained in the record was prepared after one interview with the applicant's spouse and for the purpose of establishing the emotional impact of the couple's separation on the applicant's spouse. *See Report of [REDACTED], Psy.D.*, at 2. The applicant's spouse's depression and anxiety are noted in the report, and psychotherapy is recommended. *Id.* at 6. The findings in the psychological report do not indicate that the applicant's spouse's condition amounts to emotional hardship beyond that normally experienced by others in her circumstances. The evidence in the

record does not demonstrate that the applicant's spouse's difficulties rise to the level of extreme emotional hardship beyond that experienced by other individuals facing separation from a spouse. The AAO therefore finds that the applicant has failed to establish extreme emotional or financial hardship to his spouse due to the couple's separation as required under section 212(i) of the Act.

As the applicant has not established extreme hardship to a qualifying relative no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.