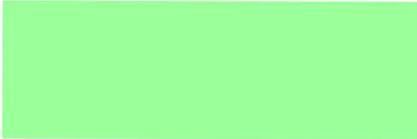




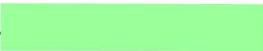
(b)(6)



DATE: **MAR 21 2013**

Office: VIENNA

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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.

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 with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request 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
Acting Chief, Administrative Appeals Office

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 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), for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. 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 his U.S. citizen spouse and daughter.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to his qualifying spouse and denied the application accordingly. *See Decision of Field Office Director*, dated April 27, 2012.

On appeal, counsel for the applicant asserts that the qualifying spouse has been experiencing extreme hardship while living in the United States without the applicant and that she will continue to do so if the waiver application is denied. Counsel notes that the qualifying spouse is suffering from depression and anxiety which will worsen, and may result in physical illness, if she continues to be separated from the applicant. Counsel also states that the qualifying spouse would be unable to receive appropriate mental health care in Albania. Furthermore, counsel indicates that the qualifying spouse would be unable to meet her educational and career goals in Albania. Finally, counsel asserts that the qualifying spouse is experiencing hardship as a single mother of her young U.S. citizen daughter but that she would not want to take her daughter to Albania. *Counsel's Brief*.

The record includes, but is not limited to: statements from the applicant and the qualifying spouse; a letter from a representative of the applicant's daughter's school; and a letter from a clinical social worker regarding the qualifying spouse. 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 [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 attempted to enter the United States on August 15, 1996 by presenting a passport and immigrant visa belonging to another person. During secondary inspection, the applicant admitted that he had purchased the passport and visa from a friend and that he had substituted his photograph for that of the true owner. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. He does not contest this finding of inadmissibility on appeal. He is eligible to apply for a waiver under section 212(i) of the Act as the spouse of a U.S. citizen.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant or to his U.S. citizen daughter can only be considered insofar as it causes extreme hardship to his qualifying spouse. 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).

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 (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 U.S. 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. 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 qualifying spouse states that her life in the United States without the applicant has been very difficult. She indicates that she and the applicant are very close and that it is emotionally difficult for them to be separated. She also notes that she and the applicant have a young U.S. citizen daughter, whom the qualifying spouse is raising on her own in the United States. She states that it is difficult for her to provide a good standard of living for herself and her daughter while sending money to support the applicant in Albania. She also contends that she will be unable to further her education while forced to work two jobs in the applicant’s absence. The qualifying spouse also states that her daughter misses the applicant and that it is difficult for her not to have her father in her life. She notes that it would be difficult for her and her daughter to live alone and to visit the applicant for only a few weeks per year. However, she states that it would also be difficult for her and her daughter to relocate to Albania due to the poor economic

situation there. The qualifying spouse fears that she would be unable to get a good job in Albania and that her daughter would have inferior healthcare and educational opportunities there.

The AAO finds that the applicant has failed to demonstrate that his qualifying spouse would suffer extreme hardship if she continued to be separated from the applicant. The qualifying spouse asserts that she is experiencing depression and anxiety and she has submitted a letter from a social worker to confirm that claim. However, the letter is brief and provides little detail about the qualifying spouse's mental health problems or their effect on her daily life. *See Letter from [REDACTED] LICSW*. Additionally, although the letter recommends that the qualifying spouse seek counseling and medication, there is no indication that the qualifying spouse has received any ongoing treatment for her mental health. The evidence is insufficient to demonstrate that the qualifying spouse is experiencing emotional difficulties which rise above that which commonly results from separation from a spouse. The qualifying spouse was also aware of the applicant's inadmissibility at the time she decided to relocate to the United States without him. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 566-67 (BIA 1999). Additionally, the qualifying spouse's concerns regarding her standard of living and educational opportunities do not reach the level of extreme hardship necessary for a waiver under section 212(i) of the Act. *See id.* Furthermore, although the qualifying spouse claims that she is experiencing financial hardship, there is no evidence in the record to support that claim. 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)).

The AAO also finds that the applicant has failed to show that his qualifying spouse would suffer extreme hardship if she were to relocate to Albania. The qualifying spouse is originally from Albania and is familiar with the language and culture of that country. She has been a lawful permanent resident of the United States for approximately seven years and there is no indication that she has close family ties here. Although she claims that she would be unable to find a good job in Albania, financial disadvantage is a common result of inadmissibility and is insufficient to prove extreme hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 567.

Although the qualifying spouse also claims that her U.S. citizen daughter will experience extreme hardship if the waiver application is denied, her daughter is not a qualifying relative for purposes of a waiver under section 212(i) of the Act. Therefore, hardship to the qualifying spouse's daughter can only be considered to extent that it causes extreme hardship to the qualifying spouse. Although the evidence demonstrates that the qualifying spouse's daughter misses the applicant and would like to have him in her life, there is no evidence that this causes extreme hardship for the qualifying spouse. Additionally, while the qualifying spouse states that being a single mother is very difficult for her, she and the applicant state in their affidavits that they chose to have a child while living apart in the hope that they would live together eventually. Finally, although the qualifying spouse fears that her daughter would have inferior educational opportunities and a lower standard of living in Albania, such concerns do not reach the level of

extreme hardship and there is no indication that such problems would cause extreme hardship for the qualifying spouse.

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

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.