

(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave. NW MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

DATE: MAY 10 2013 OFFICE: PHILADELPHIA, PA

FILE: [REDACTED]

IN RE:

APPLICANT: [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:

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 that reads "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania, and a subsequent appeal was summarily dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, and the underlying application will be approved.

The applicant is a native and citizen of Albania who has resided in the United States since June 21, 2000, when she used an Italian passport which did not belong to her to procure admission into the United States. She 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 procured 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 remain in the United States with her U.S. Citizen spouse and children.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of Field Office Director* dated December 22, 2009. The AAO dismissed on appeal, finding that the applicant failed to specifically identify any erroneous conclusion of law or statement of fact in the Field Office Director's decision. *See AAO Decision*, April 20, 2012.

On motion, counsel submits a brief in support, a psychological evaluation, a letter from the applicant's former counsel, educational and financial documents, and articles on the effects of separation due to immigration. Counsel contends that the AAO should consider a more contemporary, international law compliant interpretation of extreme hardship instead of the standards set forth in decisions which predate IIRIRA. Counsel asserts that the emotional, financial, and family-related impacts of separation on the applicant's spouse are sufficient for a waiver under section 212(i) of the Act. Counsel further claims that the applicant's spouse cannot relocate to Albania due to safety-related and other concerns.

The record includes, but is not limited to, the documents listed above, other medical, financial, and educational documents, letters from family, friends, and community members, articles on country conditions in Albania, evidence of birth, marriage, residence, and citizenship, and photographs. The entire record was reviewed and considered in rendering a decision on the motion.

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 on June 21, 2000, the applicant presented an Italian passport bearing the name [REDACTED] to procure admission into the United States under the visa waiver program. Inadmissibility is not contested on motion. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is her U.S. Citizen spouse.

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. 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 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. 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.

Counsel asserts that the AAO should not rely on outdated authority, such as *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), to evaluate extreme hardship. As noted above, the AAO relies on a range case law addressing hardship in its adjudication of appeals and motions. The AAO is bound by relevant United States law, regulations, and policy and views all hardship cumulatively, including the impact of family-related hardship on a qualifying relative, in reaching its conclusions on hardship. As *Cervantes-Gonzalez* is still valid case law it will continue to be used by the AAO in evaluating hardship.

The applicant’s spouse claims he would suffer emotional, financial, and family-related difficulties if the applicant returned to Albania without him. He explains he is a refugee from Albania, and he would worry that the applicant and their children would be in danger if they returned to Albania. The spouse states that he is self-employed in construction and provides school maintenance and painting services, which means he works eight to ten hours, returns home, and then works from 10:00 PM to 1:00 AM when school is closed. Documentation on the applicant’s business license is submitted in support. The spouse explains that the applicant takes care of the house and children, and attends to their son [REDACTED]; special needs. Educational records are submitted,

which indicate that [REDACTED] attends speech therapy and may be at risk for attention deficit hyperactivity disorder (ADHD). A licensed psychologist indicates in an evaluation that the applicant works part-time as an interpreter and accountant, and that [REDACTED] has a learning disability and a language disorder. The spouse adds that the children attend private Catholic school, and have other activities such as basketball and soccer. The spouse asserts that, given his work schedule, he would not be able to take care of the children and attend to all of their educational needs without the applicant present. He moreover claims that he would not be able to afford child care given his income, nor does he have extended family who could assist him. U.S. Federal Income Tax Returns are submitted, indicating the spouse earned \$20,620 in 2011. The applicant's spouse states that, in addition to the financial strain of separation, he would experience severe emotional difficulties if the applicant returned to Albania without him. A psychologist opines that the spouse suffers from major depression, that his post-traumatic stress disorder (PTSD) is in remission, and that he has memory problems.

Counsel contends that the applicant's spouse cannot, in any event, return to Albania because he was accorded refugee status from that country. Counsel explains that the Albanian government would not recognize him as a citizen. The spouse asserts that he has not visited his mother in Albania because he fears returning to that country, given his past political activities there. Articles on country conditions in Albania are submitted in support. The spouse additionally claims that his son [REDACTED] would not be able to access the specialized educational facilities he requires in that country.

The applicant's spouse has demonstrated he would experience financial hardship without the applicant. Although the record does not contain evidence on the applicant's income as a part-time interpreter and accountant, the applicant has submitted documentation demonstrating that the family's 2011 adjusted gross income was \$20,620. The applicant has not submitted evidence on potential child care costs, but the AAO notes that the spouse's income is insufficient for a family of four even without accounting for child care. The applicant has further established that her spouse will have difficulty caring for their two children without her present, and that even if the children relocated to Albania, he would suffer emotional difficulties due to concerns about their safety in a country where he and his family were persecuted. The psychological evaluation, which describes the spouse's background, also indicates that the spouse would experience psychological difficulties upon separation from the applicant.

The AAO therefore finds there is sufficient evidence of record to demonstrate that the applicant's spouse's hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the financial, medical, psychological/emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Albania without her spouse.

The applicant has also established that her spouse would experience extreme hardship upon relocation to Albania. The record reflects that the spouse was accorded refugee status in 1997,

and that he continues to fear persecution upon returning to that country. The record further reflects that the applicant's spouse has in fact not returned to Albania, even to visit his mother. Given the spouse's refugee status, documentation of country conditions, and his fear of returning, the AAO finds that the applicant's spouse would experience extreme hardship upon relocation to Albania.

Considered in the aggregate, the applicant has established that her U.S. Citizen spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The unfavorable factors include the applicant's misrepresentation, and her period of unlawful stay in the United States. The favorable factors include the extreme hardship to her U.S. Citizen spouse, evidence of hardship to her children, her lack of a criminal history, and evidence of good moral character as stated in letters of support.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden. Consequently, the motion is granted, and the underlying application is approved.

**ORDER:** The motion is granted, and the underlying application is approved.