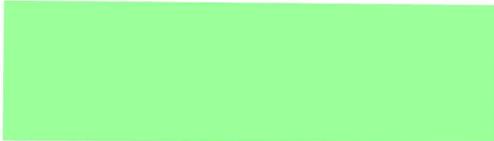


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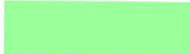


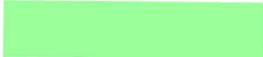
U.S. Citizenship
and Immigration
Services



Date: APR 29 2014

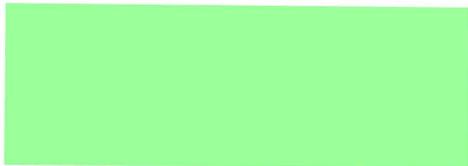
Office: NEW YORK, NEW YORK

FILE: 

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).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, New York, New York and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native of the former Yugoslavia and citizen of Montenegro 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 an 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 husband and four U.S. citizen children.

In a decision, dated August 22, 2013, the acting district director found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse as a result of her inadmissibility. The applicant submitted an affidavit from her spouse to show that he would suffer extreme emotional and financial hardship upon separation. The acting district director found that the record did not support a basis for these claims of hardship and denied the application accordingly.

On appeal, counsel asserts that it was an abuse of discretion to have an officer who did not interview the applicant and her spouse write the decision for the waiver application as certain critical information was relayed during the applicant's adjustment interview. Counsel also states that the acting director's decision misstated assertions made by the applicant and failed to take into consideration important factors in the application such as: the fact that the applicant's spouse was granted political asylum in the United States from Montenegro, that he is suffering anxiety and depression due to his wife's status, and that he is dependent on the applicant to care for their children as he works long hours. Finally, counsel asserts that the acting district director erred in stating that the applicant failed to submit financial documentation when the record included three years of tax returns and a letter from the applicant's spouse's employer. Counsel submits additional documentation of hardship with 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.

The record reflects that on October 13, 2000, the applicant attempted to enter the United States by presenting a photo-substituted Slovenian passport at the JFK Port of Entry in New York, New York. 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. 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.

The record contains references to hardship the applicant’s children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant’s children as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant’s four children will not be separately considered, except as it may affect the applicant’s spouse.

The record of hardship includes: counsel’s brief, a psychological evaluation, educational documentation indicating that the applicant’s children are in need of special educational services, financial documentation, and an affidavit from the applicant’s spouse.

The record supports a finding that the applicant’s spouse will suffer extreme emotional and financial hardship as a result of the applicant’s inadmissibility. The record indicates that the applicant’s spouse derives his U.S. citizenship from a grant of political asylum as a result of persecution he experienced in Montenegro. The applicant’s spouse states that he was granted asylum based on the mistreatment he and his family suffered in Montenegro because of their Muslim religion. The applicant’s spouse also states that all of his family lives in the United States; that he and his spouse have been living in the United States together for over 13 years, they have four children, and the thoughts of separating from the applicant are causing him anxiety and depression. He explains that he will not return to Montenegro because of persecution he experienced in the past. The psychological evaluation in the record supports the applicant’s spouse’s statements. In addition, if separated, the record indicates that the applicant’s four children would stay in the United States with their father and that this will cause their father emotional and financial hardship. The record establishes that the applicant’s spouse provides all of the financial support to the family and the applicant cares for the children, some of whom have special educational needs. The record also shows that the applicant’s spouse has been working as the superintendent of an apartment building in

Brooklyn, New York for almost seven years and that part of his employment includes free rent in the building he manages, but also 24 hour availability in the case of an emergency. The applicant's spouse states that because of these employment conditions he cannot care for his children and keep his employment. Thus, the record shows, based on the applicant's spouse's immigration history of political asylum from Montenegro, that he would suffer extreme hardship as a result of relocating to the country where he suffered persecution based on his religious beliefs and refusal to serve in the military. Moreover, based on this history one cannot expect the applicant's spouse to visit the applicant in Montenegro upon separation. Upon separation, the applicant's spouse, who has shown he is suffering depression and anxiety, will be left to care for his four children while maintaining the financial security of the household. He will also have to address his children's special educational needs.

The record indicates that the emotional suffering that will be experienced by the applicant's spouse surpasses the hardship typically encountered in instances of separation because of the applicant's spouse's reliance on the applicant to assist in caring for their children as well as his history of persecution in the country of relocation. The AAO has carefully considered the facts of this particular case and finds that the emotional hardship suffered by the applicant's spouse will rise to the level of extreme hardship. The AAO therefore concludes that the applicant has established that her spouse would suffer extreme hardship if her waiver of inadmissibility is denied.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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).

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-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance 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 adverse factor in the present case is the applicant's attempted fraudulent entry into the United States.

The favorable factors in the present case are the applicant's family ties to the United States; extreme hardship to her U.S. citizen spouse and four children if she were to be denied a waiver of inadmissibility; and the applicant's lack of a criminal record or offense.

The applicant has established that taken together, the favorable factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.