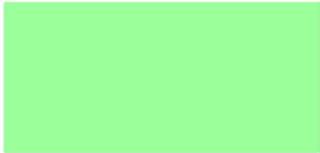


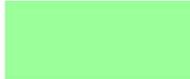
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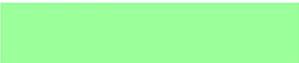
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

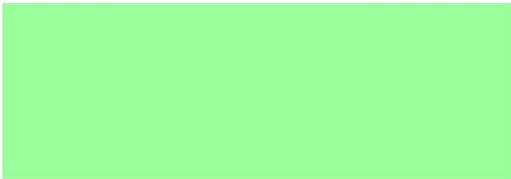


DATE: JUN 10 2014      OFFICE:      DETROIT      FILE: 

IN RE:      Applicant: 

APPLICATION:      Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(i) of the 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 cursive script that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

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

The applicant, a native and citizen of Albania, was found to be inadmissible 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 sought to procure admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen husband and seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen husband.

In a decision dated October 10, 2013, the Field Office Director concluded that the applicant did not demonstrate that her spouse would suffer extreme hardship if the waiver were not approved and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel for the applicant states that the Field Office Director did not properly consider the evidence submitted in support of the waiver, that the applicant has established that her spouse would suffer extreme hardship, and that she merits a waiver in the exercise of discretion.

In support of the waiver application, the record includes, but is not limited to: a brief from counsel; biographical information for the applicant, her spouse, their five children, and their parents; letters from the applicant's spouse, father-in-law, and mother-in-law; documentation of the applicant's spouse's income and expenses; medical records for the applicant's daughter and father-in-law; a letter from the applicant's children's school; a letter of support from the applicant's congressional representative; a psychological evaluation of the applicant's spouse; country-conditions information about Albania; and documentation of the applicant's immigration history. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) states:

- (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.

The record reflects that the applicant twice tried to procure admission to the United States through fraud or misrepresentation. The applicant attempted to gain admission to the United States in March 2003 and August 2004, on both occasions presenting a fraudulent visa in her Albanian passport. On the first occasion, she was allowed to withdraw her application for admission and return to Albania. On the second occasion, the applicant expressed a fear of returning to Albania and was afforded the opportunity to apply for asylum. Her application for asylum was denied by the immigration judge, who found the applicant not credible about her asylum claim. As a result of her attempts to procure admission to the United States using a fraudulent visa, the applicant is

inadmissible under section 212(a)(6)(C) of the Act. The applicant does not contest the finding of inadmissibility.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

(1) The Attorney General [now the Secretary of Homeland Security (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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, a U.S. citizen or lawfully resident spouse or parent of the applicant. The qualifying relative in this case is the applicant's U.S. citizen spouse. Hardship to the applicant or the applicant's children is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and U.S. Citizenship and Immigration Services 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 deportation, 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, 885 (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 1292, 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.

On appeal, counsel for the applicant states that the combination of emotional and financial hardships imposed on the applicant creates a hardship that is extreme. The applicant’s spouse states that he depends on the applicant to care for their five children, ages eight and younger, while he works long hours at the family restaurant, most days from 6:30 a.m. to 10:00 p.m. The applicant’s spouse states that he works seven days a week, although his pay stubs from the family business indicate a 40-hour work week. He also states that he would fear for the applicant’s safety, health, and well-being in Albania and it has had a negative impact on his emotional and physical health to think about having to separate his family. The applicant’s spouse states that his worries about his father’s health add to his emotional stress and that although their family is close, his parents would not be able to care for five young children in the applicant’s absence due to their own health issues and advancing age. The applicant’s spouse also notes that their seven year-old daughter has special medical needs related to reconstructive hip surgery. In a psychological report dated January 15, 2013, a licensed psychologist states that the applicant’s spouse is suffering from major depressive disorder as a result of his worries concerning the applicant’s immigration

matters, in particular the trauma the family experienced when immigration authorities arrested the applicant in 2010. The psychologist concludes that if the applicant's spouse were to be separated from the applicant, "he would slip into a protracted depression that would affect all areas of functioning and compromise his ability to parent [their] minor children." Letters from family and neighbors of the applicant and her spouse confirm the applicant's role as the main support system to her spouse as well as the primary caregiver to the couple's children.

Although the record does not reflect the degree of financial hardship that the applicant's spouse would suffer in her absence, the applicant's spouse is the family's breadwinner. He states that his employment requires him to be away from their home for long hours, and as a result he would need to obtain child care for their five young children, none of whom are of age to be left alone. Upon review of the applicant's spouse's expenses, including his mortgage of \$823.90 per month, it is clear that the cost of child care for five children on his salary of \$12 per hour would result in financial hardship. The applicant's spouse's federal income tax returns for 2011 reflect an adjusted gross income of \$27,720, which is below the 2014 poverty guidelines for a family of six.

All stated elements of hardship must be considered in aggregate to determine if the applicant's spouse will endure extreme hardship. Although no single factor reaches an extreme level, the applicant has shown that the totality of her spouse's experience in the United States without the applicant, particularly the emotional and physical challenges of caring for five young children while providing for them financially, would constitute extreme hardship.

As to whether the applicant's spouse would suffer extreme hardship if he were to relocate to Albania with the applicant, the record indicates that the applicant's spouse is a native of Albania; however, the record also indicates that he has resided in the United States since he received asylum in the United States in 1997. The applicant's spouse states that he would worry considerably about the health and safety of their five young children if he were to relocate the family to Albania. In particular, he states that he worries about their daughter, who received reconstructive surgery for a dislocated hip, and the ability to obtain proper care for her there. The applicant submits an article about the state of health care in Albania, specifically addressing corrupt practices. The applicant's spouse also is concerned that their children could be unsafe if they were to be "in the wrong place," given political instability in Albania. Moreover, counsel asserts that political conditions and tensions also could re-traumatize the applicant's spouse, given his flight from persecution in Albania and his subsequent grant of asylee status in the United States.

The record also establishes that the applicant's spouse owns a home, has steady employment in the United States and that his employment is the source of the family's income. The applicant's spouse, moreover, describes having a particularly close relationship with his parents and assisting his father, who suffered from a disabling accident in 2006. Taking into account the applicant's spouse's strong family ties to the United States, in particular to their five young children, one with special needs, and his aging parents, for whom he provides financially; the applicant's spouse's concerns about their children's welfare in Albania; and the applicant's spouse's asylum status in light of political tensions in some parts of Albania, the record establishes that the applicant's

spouse would experience extreme hardship if he were to relocate to Albania to reside with the applicant.

Considered in the aggregate, the applicant has established that (qualifying relative) 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-Moralez*, 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.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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)...

*Id.* at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.*

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse would face if the applicant were to reside in Albania, whether he accompanied the applicant or remained in the United States; the applicant's U.S. citizen children and the hardship they would

experience without her; and the applicant's good character, according to letters from family and community members. The unfavorable factors include the applicant's two attempts to procure admission to the United States through fraud or misrepresentation and the negative credibility finding of the immigration judge.

The applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

**ORDER:** The appeal is sustained.