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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 25 2014

Office: SEATTLE, WA

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 (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 Field Office Director, Seattle, Washington, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Albania who used a false Italian passport to enter the United States. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). He is the spouse of a U.S. citizen and has one U.S. citizen child. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 24, 2013.

On appeal, counsel for the applicant asserts that the Field Office Director failed to properly review the submitted evidence demonstrating medical and financial hardship, failed to consider the hardship factors in the aggregate and that the record contains sufficient evidence to establish extreme hardship to the applicant's spouse.

The record contains, but is not limited to, the following documentary submissions: statements from counsel for the applicant; statements from the applicant, his spouse and their family members; financial records, including bank statements and tax returns; copies of mortgages, loans, bills, invoices for utilities; country conditions materials on Albania; statements from friends and associates of the applicant; medical documents related to the medical condition of the applicant's spouse; a statement from the applicant's spouse's family therapist; birth and marriage certificates; documents filed in relation to the applicant's Form I-130 and Form I-485; and photographs of the applicant, his spouse and their daughter.

Section 212(a)(6)(C) of the Act states, in pertinent part:

- (i) In general. 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 chapter is inadmissible.

The record reflects that the applicant used a false Italian passport to enter the United States on December 18, 2002. As the applicant misrepresented his identity and authorization to enter the United States he is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides, in pertinent part:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant or their children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS 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 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*, 138 F.3d at 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.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal, counsel for the applicant discusses precedent cases relevant to making a determination of extreme hardship and asserts that the Field Office Director failed to properly weigh submitted evidence. Counsel asserts that the evidence of the applicant’s spouse’s medical condition was not accorded proper weight, and that proper consideration was not given to the mental and emotional impacts on the applicant’s spouse. Counsel further asserts that the evidence of financial obligations and family income are sufficient to demonstrate that the applicant’s spouse would experience financial hardship, and states the Field Office Director should not have relied on the applicant’s Form I-864 to rebut assertions of financial hardship. Counsel further states that the hardship factors were not considered in the aggregate.

The record also contains a detailed letter from the applicant’s spouse. In her letter, the applicant’s spouse explains that she has poor vision due to a childhood accident that left one of her eyes useless and the other suffering the strain of overcompensation, and that she has to take very special care not to overstrain her compensating functional eye with contacts and a proscribed resting period for her good eye. She explains that the applicant has always accommodated her medical needs by driving her around to appointments and at night when her vision problems trouble her and helped take care of their daughter at night when she cannot see well because of having to remove her contact.

The record contains several medical documents discussing the applicant’s spouse’s medical condition, including documents which demonstrate an attempt to treat the applicant’s spouse for the strain on her remaining eye. The applicant’s spouse’s explanation of the impacts on her ability to function, such as being able to drive at night or take care of her child at night, are plausible and supported by evidence in the record.

The applicant's spouse also notes her emotional and mental struggles, stating that she experiences bouts of anxiety and crying. A statement from a Licensed Marriage and Family Therapist, asserts that the applicant's immigration proceedings have been a significant source of stress for the applicant's spouse, and that she is faced with a situation which is emotionally overwhelming and which impacts her ability to fully function as a wife, mother and employee. This evidence is persuasive, and reflects that the applicant's spouse would experience significant emotional hardship upon separation from the applicant, her spouse and the one who assists her physically, or upon relocation by having to sever family and community ties in the United States.

The applicant's spouse also explains that she is struggling economically, and that she and the applicant have built a life in the United States, purchasing a home, pursuing their educations and having a child. The record reflects that the applicant and his spouse purchased a home, and then took out a second mortgage on the property, reflecting the accumulation of financial obligations in the United States. However, the record does not reflect how the applicant has financially supported his spouse and family in the United States. While the applicant's Form G-325, Biographic Information, indicates that the applicant was employed for a number of years, there are no W-2 forms, pay stubs or other financial records indicating what the applicant contributed financially. The applicant asserts he would not be able to find employment in Albania, and could not support his spouse if he were removed. The travel report information on Albania issued by the U.S. Department of State, Bureau of Consular Affairs, indicates that Albania has one of the lowest wage rates in Europe. The report also states that safety and security are a concern, that corruption and bribery are widespread, petty crimes are a problem throughout the country and a region of the country in the South is controlled by criminal drug gangs. The State Department Report on Human Rights in Albania reports that the national minimum wage is about \$183 a month. Although the documents submitted do not establish an uncommon financial hardship, they are sufficient to reflect that it would be difficult for the applicant's spouse to provide financial assistance to his spouse through employment in Albania, and that the applicant's spouse would have to assume any additional financial burdens and experience financial hardship if the applicant were removed.

When the physical impacts on the applicant's spouse due to her medical condition are taken into consideration with the emotional and financial hardship that would arise due to departure, the record reflects that the applicant's spouse would experience hardship rising to the degree of extreme hardship due to separation.

The applicant's spouse states that the conditions in Albania are very poor, and that their daughter would lose access to adequate medical care upon relocation, deepening the burden on the applicant's spouse because of her vision problems. She notes the poor state of infrastructure, education and safety in Albania, and worries that, as an American, she would be perceived to have money and could become a target for gangs and kidnappers.

The record contains a number of letters from members of the applicant's family community, persons that knew the applicant in both Albania and the United States. The applicant's sister, in-laws and parents all discuss the hardships endured in Albania.

The Department of State Country Specific Information on Albania states that medical facilities and capabilities in Albania are limited beyond rudimentary first aid treatment. Emergency and major medical care requiring surgery and hospital care is inadequate due to lack of specialists, diagnostic aids, medical supplies, and prescription drugs.

Given the fact that the applicant's spouse has serious vision problems that she would have to cope with in addition to the common impacts of relocation, such as obtaining employment to cover medical costs, disrupting the continuity of her medical care with the doctors familiar with her medical history and treatment program and returning to a country with poor economic conditions while trying to care for a young child would result in hardship rising to the level of extreme hardship upon relocation.

The applicant also merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien 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 "balance 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 record indicates that the unfavorable factors in this case include the applicant's misrepresentation and periods of unauthorized presence and employment. The favorable factors in this case include the presence of the applicant's spouse, the presence of his U.S. citizen child, the extreme hardship the applicant's spouse would experience due to his inadmissibility, and the lack of any criminal record for the applicant during his residence in the United States.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. 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 his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.