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



U.S. Citizenship
and Immigration
Services

[Redacted]

Date: JUL 06 2015

[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:

[Redacted]

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Charlotte Field Office, denied the application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 procuring admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Amerasian, Widow or Special Immigrant (Form I-360). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States.

The field office director found that the applicant failed to establish that a qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director* dated August 18, 2014.

On appeal the applicant contends that the field office director erred because she is the beneficiary of an approved Form I-360 as a self-petitioning abused spouse of a United States citizen, so the field office director should have considered hardship to the applicant and her child, but that the field office director denied the waiver because the applicant had not demonstrated extreme hardship to her U.S. citizen child. The applicant also contends that the field office director failed to consider the totality of hardship for her and her child, and discounted evidence of abuse that the applicant had suffered.

In support of the appeal the applicant submits a statement and information about education in Albania. The record contains previously-submitted statements from the applicant and her spouse; medical documentation for the applicant and for the applicant's child; financial documentation; a letter of support for the applicant from the spouse's mother; and documents, statements, letters of support, and other evidence submitted in conjunction with the applicant's Form I-360. 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 that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

Sec. 204(a)(1)(A) of the Act provides:

(iii) (I) An alien who is described in subclause (II) may file a petition with the Attorney General [Secretary] under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the Attorney General [Secretary] that--

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this subclause is an alien--

(aa)(AA) who is the spouse of a citizen of the United States;

The applicant filed her I-360 petition as the abused spouse of a United States citizen under Section 204(a)(1)(A)(iii) of the Act. Section 212(i) authorizes the Secretary to waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien granted classification under clause (iii) of section 204(a)(1)(A) if the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified parent or child.

Accordingly, as the beneficiary of an approved I-360, the applicant must demonstrate extreme hardship to herself or to her United States citizen child. 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).

The record reflects that at her interview for adjustment of status, conducted on May 29, 2014, and in a supporting statement submitted with Form I-485, the applicant stated that she had entered the United States on May 11, 2002, by using a fraudulent passport, which was later sent back to Albania. She also indicated on Form I-485 that her last entry to the United States had been in "tourist" status.

Based on this information the field office director determined the applicant inadmissible for misrepresentation. The applicant has not contested the finding of inadmissibility.¹

The record further reflects that the applicant married a U.S. citizen on [REDACTED]. A Petition for Alien Relative (Form I-130) was filed on August 5, 2003, and subsequently denied on November 10, 2009, following the applicant's divorce on [REDACTED]. On October 20, 2010, the applicant filed Form I-360, which was approved on April 18, 2012. The applicant married her current spouse on [REDACTED] and filed Form I-485 on July 10, 2013.

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

¹ It is unclear from the record whether the applicant presented a fraudulent document to a U.S. immigration official, however as the applicant has not contested the determination that she is inadmissible for misrepresentation under Section 212(a)(6)(C) of the Act, we will not disturb the finding.

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. *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.

On appeal the applicant asserts that she has had two abusive relationships, but now has a close bond and stable relationship with her spouse and that losing the relationship would be detrimental to her mental wellbeing. In previous statements the applicant stated that when she was 18 years old she fled to the United States because she had been kidnapped and raped in Albania due to her family’s political involvement. The applicant submitted documentation from Albania, dated April 22, 2002, that indicates a medical expert determined, following an examination requested by a Judicial Police Officer, that the applicant had been raped. The applicant states that her spouse helps her move on from the rape and that it would be a hardship for her and her daughter if they are unable to stay with her spouse, the child’s father.

The applicant states that her daughter had been diagnosed with Still’s Murmur, which she states is common in older children but rare in infants like her daughter, so they must keep an eye on her health, although the applicant believes she could not afford proper medical care in Albania. The applicant states that her spouse’s health insurance paid expenses for the child’s condition, which has cleared up, but the applicant asserts that the child could be at risk of further medical issues as she gets older. The applicant’s spouse states that their daughter now appears to have a normal childhood.

Medical documentation submitted to the record shows that the applicant’s child was diagnosed with a murmur, but does not require further follow up, and statements from the applicant and her spouse indicate there is no current issue. The applicant states that she also has had some health problems that require access to health insurance and medical care, and the applicant’s spouse states that the applicant has a thyroid condition and is getting weaker and lethargic since the birth of their child, but that his insurance provides care for her. Medical records show that the applicant was found to have hypothyroid and anemia in 2013 and depressed mood in 2014. The medical documentation

submitted does not show that either the applicant or her daughter have serious health concerns that require ongoing treatment. However, according to information for Albania provided by the U.S. Department of State, medical care at private hospitals in the capital Tirana remains below western standards and facilities outside Tirana have very limited capabilities. *See U.S. Department of State, Bureau of Consular Affairs – Albania* dated January 6, 2015.

The applicant asserts that as she has been gone from Albania since 2002 and that her school credentials here cannot transfer there since interior design is not considered a profession. She states that she would be unable to support her daughter and that her spouse's relocation to Albania would have ramifications on his professional advancement as he has worked years to attain his current position but could not find a comparable job in Albania, therefore causing financial hardship to the applicant and her child. The applicant's spouse states that the company where he is employed specializes in solar farms but that there is no niche in Albania for solar energy as the country cannot support the required infrastructure. He states that it has taken years for him to become a senior project manager, but even a six month absence would make his achievements obsolete and he fears loss of his position would jeopardize his ability to provide for the family.

According to the U.S. Department of State Albania's per capita income is among the lowest in Europe, *See U.S. Department of State, Bureau of Consular Affairs – Albania* dated January 6, 2015. It further indicates that organized criminal activity occurs in many regions and that high unemployment and other economic factors encourage criminal activity. The applicant notes the expense of education in Albania, particularly English-language schools. According to the U.S. Department of State, Country Reports on Human Rights Practices for 2013, parents must purchase supplies, books, uniforms, and space heaters for some classrooms, which were prohibitively expensive for many families, and that many families cited these costs as a reason for not sending girls to school. Furthermore, the report states that among Albania's most significant human rights problems was discrimination against women.

The applicant states that her family in Albania could not accommodate her and her child, that if her daughter relocated to Albania she would lose the opportunity to bond with her father, and that language and cultural boundaries would be insurmountable for her child and her spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that she and her U.S. citizen child would suffer extreme hardship were the applicant unable to reside in the United States.

The record establishes that the applicant has been residing in the United States since 2002 and her daughter born here. Were the applicant to relocate abroad, she would have to leave her child, her family, her community, and the stable relationship she has developed with her spouse following her rape and a previous abusive relationship. By remaining in the United States the applicant's daughter would be separated from her mother during her formative years. Evidence in the record indicates that in Albania the applicant would likely be unable to support herself and her daughter, if the child were to accompany her, and that although they do not appear to have serious health issues they would have limited access to medical facilities while also being concerned about crime, sanitation,

and basic services and possibly gender discrimination. Further, if the daughter relocated with the applicant, she would be subjected to inadequate health care and possibly substandard education while likely being separated from her father, which would cause extreme hardship to the daughter as well as the applicant by extension. The record further establishes that were the applicant's spouse to relocate to Albania to reside with the applicant and their daughter it is unlikely he would be able to financially support them, given his lack of familiarity with the language and culture and the poor economy in Albania.

Accordingly, we find that the circumstances presented in this application, in the aggregate, rise to the level of extreme hardship for the applicant and her U.S. citizen child.

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.

In *Matter of Mendez-Morales*, 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 for relief must bring forward to establish that he or she merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion 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.* at 301.

The favorable factors in this matter are the hardships the applicant and her U.S. citizen child would face if the applicant is not granted this waiver, her employment and schooling in the United States, the support from her spouse and his mother, her apparent lack of a criminal record, and passage of time since her immigration violation. The unfavorable factor is the applicant's entry to the United States through misrepresentation.

Although the applicant's immigration violation is serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of 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.