



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **MAY 04 2015** Office: CLEVELAND

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, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Cleveland Field Office Director, and 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 has resided in the United States since October 2001, when she entered the United States using a photo-substituted passport. 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 gaining admission to the United States using fraudulent documents. The applicant is married to a U.S. citizen and is the beneficiary of an approved Form I-130, 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.

The Field Office Director determined that the applicant had not established extreme hardship to her qualifying relative if she were removed from the United States and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly.

On appeal, the applicant, through counsel, asserts the Field Office Director abused her discretion in finding that the applicant failed to submit sufficient evidence to establish extreme hardship to her spouse if the waiver application was denied.

The record of evidence includes, but is not limited to: statements from the qualifying spouse and his mother, identity and relationship documents, financial documentation, letters from friends and family, a psychosocial evaluation, and photographs.

The entire record was reviewed and all relevant evidence considered in reaching 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:

- (1) The Attorney General [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.

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. The applicant's

qualifying relative is her U.S. citizen spouse. 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-Morales*, 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*, 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.

In the present case, the record reflects that the applicant entered the United States using a fraudulent passport. 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 does not contest the director's finding of inadmissibility.

The first issue we will address is whether the applicant has established that her qualifying spouse would endure hardship if the applicant returns to Albania and he remains in the United States.

The applicant and her qualifying spouse have been a couple since 2007 and consider themselves to be soul mates. They married in 2009, approximately five years ago. The qualifying spouse has relied upon the applicant for emotional support since they met, as he has sought to overcome his grief from his first wife's suicide in 2003. According to a licensed social worker, the applicant's spouse would be devastated and severely re-traumatized if the two were separated. The applicant's sister states that the qualifying spouse suffers from depression and that the applicant "lights up his spirit" and cooks healthy food for him. The applicant's in-laws attest to their years-long concern about the applicant's spouse's mental state and suffering; and they emphasize the applicant's positive influence on him and his likely devastation if the applicant could not remain with him in the United States. The applicant has shown that her qualifying spouse would experience emotional hardship if they were separated.

According to evidence in the record, the qualifying spouse relies upon the applicant to help with his medical issues, including, but not limited to: glucose intolerance, chronic and uncontrolled knee and back pain, major depression and post-traumatic stress disorder (PTSD). A physician explains that the applicant's spouse has suffered from depression since childhood but that his symptoms have worsened after his first wife's death. As reported to the physician by the applicant's spouse, he is having difficulty sleeping; he also suffers from nightmares, flashbacks, and guilt related to his first wife's suicide. In addition, he has headaches and high blood pressure.

With respect to financial hardship her spouse would experience without her, the applicant asserts that her qualifying spouse relies upon her to buttress their financial situation. She claims that she has been working since 2009 as a dishwasher. According to their 2012 Form 1040 tax return, the couple reported \$19,532 in wages, most of which reflects the applicant's spouse's earnings. Given the relatively low family income reflected in the evidence, however, it is reasonable to conclude that any additional income that the applicant provides improves their family's standard of living. The applicant has established that, without her, her qualifying spouse would experience a degree of financial hardship.

Given the qualifying spouse's fragile emotional state, he relies heavily upon the applicant for support. He suffers from numerous health issues, which require careful monitoring. He earns little income and needs the applicant's financial contributions to their household income. We conclude, therefore, that the applicant has provided sufficient evidence that, considered cumulatively, establishes that her qualifying spouse would suffer extreme hardship if the waiver application is denied and they are separated.

We will next address the issue of whether the applicant has established hardship to her qualifying spouse if he relocates to Albania to be with her.

The record reflects that the applicant's qualifying relative moved to the United States approximately 17 years ago. His three adult children, siblings, and widowed mother all reside in the United States. The applicant asserts that her qualifying spouse would suffer emotional hardship if he relocated with her, because he would then be separated from his 78-year old widowed mother and siblings. The applicant indicates that her spouse became estranged from his three adult children after his first wife's death, but recently he has begun to renew his relationship to his youngest daughter and only grandchild. In a psychosocial evaluation, a licensed clinical social worker reports that the applicant's spouse is concerned that he would be isolated in Albania and that he has no ties there, whereas he has extensive family in the United States. The applicant has established that her qualifying spouse would suffer emotional hardship should he relocate with her to Albania.

The applicant also asserts that her qualifying spouse's access to health care in Albania would be limited in comparison to that available to him in the United States. She provides several articles addressing health care in Albania; one concludes that Albania has far fewer doctors per capita than the United States does. Others state that all Albanians are legally entitled to equal access to health care, but many people fail to receive needed health care because they must pay for most of their health care out of pocket and cannot afford it. Another article states that Albania's health care system has fallen into disrepair since the dissolution of the Soviet Union. According to a letter from a physician, the applicant's spouse suffers from uncontrolled stage 2 hypertension, hypertriglyceridemia, impaired glucose intolerance, chronic knee and back pain, major depression and untreated PTSD.

The applicant's spouse, age 58, also expresses concern about finding housing and employment in Albania, should he relocate, given his age and limited work experience. He would lose his current employment and health insurance. He also refers to Albania's rampant corruption. Country-conditions reports in the record indicate that organized criminal activity occurs in many regions of Albania.

The documentation in the record, considered in its totality, reflects that the applicant has established that her U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. The applicant's spouse has resided in the United States for more than 17 years and has no family ties to Albania. If he relocated to Albania, he would become estranged from his mother, siblings, and three children. He would lose his income, employment, and health-care benefits. Moreover, he suffers from numerous physical and emotional health problems that require

consistent care. Accordingly, we find that the circumstances presented in this application, supported by the evidence and considered in their cumulative effect, rise to the level of extreme hardship.

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.

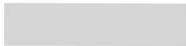
In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

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 community and family ties in the United States; the letters from community members describing the important role that the applicant plays in the life of her family in the United States; and the applicant's apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's initial entry into the United States using fraudulent documents and her presence in the United States without lawful status.

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NON-PRECEDENT DECISION

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Although the immigration violations committed by the applicant are serious, we find that 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.