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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

Htc



Date: **NOV 30 2011**

Office: VIENNA, AUSTRIA

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Maria Feh
for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Vienna, Austria and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is before the AAO on Service motion to reopen. The motion will be granted and the waiver application will be approved.

The applicant is a native and citizen of Albania who entered the United States without inspection in April 2004 and remained until she voluntarily departed the United States on January 28, 2008. The applicant, therefore, accrued unlawful presence from April 2004 until she departed the United States on January 28, 2008. The applicant is inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is married to a United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and child.

The Officer in Charge found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to her qualifying relative. The Form I-601, Application for Waiver of Ground of Excludability (Form I-601) was denied accordingly. *Decision of the Officer in Charge*, dated August 29, 2008.

On appeal, the AAO determined that although extreme hardship had been established were the applicant's spouse to remain in the United States while his wife resided abroad, extreme hardship had not been established were the applicant's spouse to relocate abroad to reside with the applicant. Consequently, the appeal was dismissed. *Decision of the AAO*, dated January 28, 2011.

In support of the instant motion, counsel for the applicant submits the following: a brief, dated October 28, 2011; a supplemental statement from the applicant's spouse; an affidavit from the applicant's spouse's brother; documentation establishing political asylum status for the applicant's spouse's brother and sister; an affidavit in support from [REDACTED], Professor and Chair of History, [REDACTED] and numerous articles regarding country conditions in Albania. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

- (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
- (v) The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or the child can be considered only insofar as it results in hardship to a qualifying relative. 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 AAO, in its decision dated January 28, 2011, found that the applicant had established extreme hardship to her U.S. citizen spouse if he were to remain in the United States while she resided abroad due to her inadmissibility. *Supra* at 7. As such, this criterion will not be re-addressed on motion. In the same decision, the AAO concluded that the applicant had failed to establish that her U.S. citizen spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility. Specifically, the AAO noted that it had not been established that the applicant’s spouse would be at risk in Albania as a result of his family’s political opinion. Moreover, the AAO found that it had not been established that the applicant’s spouse would be unable to obtain gainful employment in Albania to meet his current financial responsibilities. *Supra* at 6.

On motion, counsel addresses the concerns raised by the AAO. To begin, a declaration has been provided from the applicant's spouse further detailing the hardships he will experience were he to relocate to Albania to reside with the applicant. To begin, he notes that he is now living with his

wife in Italy, even though they have no legal right to live there, because he cannot live in Albania. He outlines that the [REDACTED] family political history makes it difficult for him to return to Albania as they have long been associated with the Pro-Democracy movement. The applicant's spouse contends that Albania is the place where Socialists hold grudges for decades and relocating to another party of the country is not an option as Albanians do not allow someone to stay in the neighborhood unless the individual has ties to that area. The applicant's spouse goes on to outline his family's anti-communist position and the ramifications of their political position, including imprisonment, hard labor and death. Finally, the applicant's spouse asserts that the economy is very bad in Albania and unemployment is very high and he will not be able to support himself and his family were he to reside in Albania. *Supplemental Statement of [REDACTED]*, dated October 25, 2011.

In support of the instant motion, the applicant's spouse's brother has provided an affidavit. As he explains, he and his brother share the same father, the same grandfather and the same great uncle, all of whom were killed and/or tortured and persecuted by the communists. He states that these same communists disguised themselves as Democrats over the years to maintain their power. He contends that he and his sister, and the [REDACTED] family as a whole, is well known throughout Albania and thus, although the applicant's spouse was not very involved politically, he is still known to others. He asserts that because the community hates the [REDACTED] family, they will never let his brother get a job and some will prevent the applicant and her spouse from obtaining documents and other items they need. The applicant's spouse's brother concludes that the older communists are now holding themselves out as Socialists or even Democrats, taking vengeance upon all who helped take down the old Community Party, including family members of activists. *Affidavit of [REDACTED]*, dated October 12, 2011.

Moreover, an affidavit has been provided by [REDACTED], Ph.D. [REDACTED] holds a Ph.D. in Balkan history with an Albanian specialty from the [REDACTED] and is currently professor of Balkan history and chair of the department of history at [REDACTED]. [REDACTED] states the following:

I have read [REDACTED]'s [the applicant's spouse's] statements and find this material to be consistent with the recent history of Albania and current country conditions, as I know them. Based upon his statement, and my in-depth knowledge of the current situation in Albania, I believe that on account of [REDACTED] perceived anti-Socialist political opinion, on account of the fact that he comes from a political family which has enemies, on account of his fear that grudges carried out against his family will be carried out against him, on account of the fact that collective responsibility is a time honored tradition in Albania, and on account of the fact that the rule of law has yet to be established in Albania, if [REDACTED] were to return to Albania persecution in the form of a threat to his safety is a reasonable possibility. Albanian

authorities are unlikely to be able to significantly ameliorate that threat....

Affidavit of [REDACTED] Professor and Chair of History, [REDACTED] dated October 11, 2011.

[REDACTED] goes on to outline that continuing instability in Albania has prevented the country from fully establishing the rule of law and Albania suffers from an enduring political culture still informed by its Communist past. [REDACTED] further notes that “political parties are essentially clan-based social groups with entire families joining one party or the other. Party affiliation has less to do with policy differences than it does with family and clan loyalty and patronage and therefore becomes very personal....” *Supra* at 5. As a result, “many Albanians tend to view those in opposition with acrimony verging on low-level war at both the national and local level....” *Supra* at 5.

Finally, [REDACTED] explains that it would not be a viable option for the applicant’s spouse to relocate to a different area in Albania as Albania is a country “with few secrets where people have long memories. Were [REDACTED] forced to return his location would be discovered....” [REDACTED].

Counsel has also submitted numerous articles regarding the volatile political situation in Albania and the substandard economy in Albania. As noted by the U.S. Department of State, Albania is considered one of the poorest countries in Europe, with a per capita income of approximately \$4,200. *Background Note-Albania, U.S. Department of State, dated August 30, 2011.*

On motion, based on a totality of the circumstances, the AAO concludes that the applicant has established that her U.S. citizen spouse would suffer emotional and financial hardship were he to relocate to Albania to reside with the applicant as a result of her inadmissibility.

A review of the documentation in the record, when 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. Accordingly, on motion the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of “extreme hardship.” It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. 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 . . . 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 favorable factors in this matter are the extreme hardships the applicant’s U.S. citizen spouse and child would face if the applicant were to reside in Albania, regardless of whether they accompanied the applicant or remained in the United States; the payment of taxes; the applicant’s apparent lack of a criminal record; home ownership; and family and community ties. The unfavorable factors in this matter are the applicant’s entry without inspection and unauthorized presence while in the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that on motion, 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 proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the motion to reopen will be granted and the waiver application approved.

ORDER: The motion to reopen is granted. The waiver application is approved.