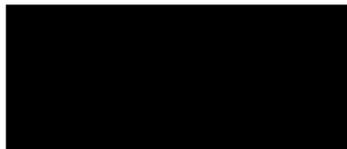


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**

PUBLIC COPY



H6

DATE: OCT 11 2011

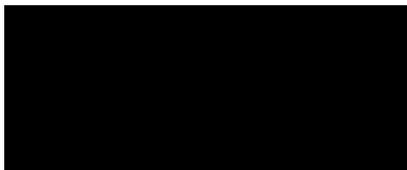
Office: VIENNA, AUSTRIA

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Vienna, Austria. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Albania who resided in the United States from August 4, 2001 (when she was admitted into the U.S. with a B2 visitor visa) until September 4, 2008 (when she voluntarily departed the United States). The applicant was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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 10 years of her removal from the U.S. The applicant is married to a U.S. citizen, and she is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. §1182(a)(9)(B)(v), in order to live in the United States with her U.S. citizen spouse.

In a decision dated March 9, 2009, the director concluded the applicant had failed to establish that her husband would experience extreme hardship if she were denied admission into the United States. The Form I-601 waiver application was denied accordingly.

Through counsel, the applicant appealed the Form I-601 denial. Counsel asserts on appeal that the applicant's U.S. citizen husband will experience extreme emotional and financial hardship if the applicant is denied admission into the United States. In support of the assertions made on appeal, the record contains a hardship letter written by the applicant's husband, copies of the applicant's twin daughters' birth certificates and U.S. lawful permanent resident (LPR) cards, and copies of her daughters' academic and school leadership achievements in the U.S. The record also contains medical information for one of the applicant's daughters, as well as LPR and medical information for the applicant's parents, and copies of the applicant's brother's naturalization certificate and his children's U.S. passports. Counsel indicates on the Form I-290B, Notice of Appeal or Motion (Form I-290B) that he will submit a brief and/or additional evidence to the AAO within 30 days. However, no new brief or evidence was submitted.¹ The entire record was reviewed and considered in rendering a decision on the appeal.

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

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

...

¹ On August 11, 2011, the AAO sent a fax to counsel stating that the AAO had not received a separate brief and/or evidence with regard to the applicant's Form I-290B. Counsel was provided 5 days to submit copies of the documentation, along with evidence of the date the documents were originally filed with the AAO. Counsel responded on August 11, 2011 with a statement that he did not file a brief or additional evidence in support of the applicant's appeal.

(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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

(iii) Exceptions.-

....

(II) No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

The record reflects that the applicant was admitted into the U.S. on August 4, 2001, as a B2 visitor visa holder. Her admission was valid through February 5, 2002. On November 9, 2001, the applicant applied for asylum. Her asylum application was denied by the Houston, Texas asylum office on December 4, 2001 and her case was referred to an immigration judge. The applicant's asylum claim was denied by an immigration judge on September 25, 2003. The applicant was granted voluntary departure until November 24, 2003, with an alternate order of removal to Albania. The applicant filed various timely appeals and motions to the Board of Immigration Appeals (BIA) with regard to her asylum claim. A final denial was issued by the BIA on December 20, 2005. The applicant subsequently filed a Petition for Review of her case with the 2nd Circuit Court of Appeals. The Petition was denied on February 26, 2007. The applicant subsequently departed the United States on September 4, 2008. She has remained outside of the U.S. since that time.

The above history reflects that the applicant was lawfully admitted into the United States, and that she did not accrue unlawful presence in the U.S. prior to applying for asylum on November 9, 2001. A final denial was issued in the applicant's asylum case on February 26, 2007. The record does not indicate that the applicant worked in the U.S. without authorization, and the exception contained in section 212(a)(9)(B)(iii)(II) of the Act provides that the period of time in which the applicant had a bona fide application for asylum pending shall not be taken into account for unlawful presence determination purposes. The period between November 9, 2001 and February 26, 2007, will therefore not be counted for unlawful presence calculation purposes. However, the applicant remained in the U.S. until September 4, 2008. The applicant was therefore unlawfully present for 462 days (approximately 1 year, 3 months) from the time that she received a final denial on her asylum claim until the date of her departure from the U.S. Because the applicant was

unlawfully present in the U.S. for more than one year, and she is seeking readmission into the U.S. within 10 years of her last departure from the United States, she is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides:

Waiver.-The Attorney General 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 to the satisfaction of the Attorney General 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant married a U.S. citizen on November 6, 2003. The applicant's spouse is a qualifying relative for section 212(a)(9)(B)(v) of the Act, waiver of inadmissibility purposes.

Section 212(a)(9)(B)(v) 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. 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).

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*, 22 I&N Dec. 560, 565 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 BIA 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 BIA 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 BIA 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 record in this case refers to hardship the applicant’s two daughters would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the present case, the applicant’s spouse is the only qualifying relative, and hardship to the applicant’s children will therefore not be separately considered, except as it may affect the applicant’s spouse.

The record contains a sworn statement written by the applicant’s husband stating that he and the applicant have been married since November 26, 2003, and that he has helped raise her twin daughters, born November 15, 1995 (now 15 years old). He states that he and the applicant’s daughters will suffer hardship if the applicant is not allowed to live in the United States. Specifically, the applicant’s husband indicates that he is employed as an assistant general manager at a restaurant, and that he has worked at the restaurant for over 4 years. The applicant’s husband

states that unemployment is high in Albania, and that his work prospects there are low. He does not speak the Albanian language and he fears he would not be able to support his family, or provide his family with health benefits in Albania. The applicant indicates that he would miss his wife and stepdaughters if they lived in Albania. He would also experience hardship if his stepdaughters remained in the U.S. with him, and he had to work and care for them without the help of their mother. The applicant's husband indicates that although the girls have other relatives nearby, their grandparents are elderly and ill and would be unable to help care for their granddaughters. He indicates further that the applicant's brother is unable to help because he is busy caring for his own family. The applicant's husband states that one of his stepdaughters has medical problems with her kidney, and that she requires close medical monitoring. He states further that both stepdaughters excel in school and have received academic and/or leadership awards. He feels they would experience hardship in Albania because they do not read or write the language, and they speak only a bit of the language.

The record contains copies of the LPR cards for the applicant's daughters and for her parents. It also contains copies of the U.S. naturalization certificate and U.S. passports for the applicant's brother and his two children. A medical letter is contained in the record reflecting that the applicant's mother is under a doctor's care for Diabetes Mellitus, Hypertension and Hyperlipidemia. Her father is under a doctor's care for Hypertension. The record also contains a medical letter reflecting that one of the applicant's daughters is under a doctor's care for Ptotic Kidney.

Upon review, the AAO finds that the evidence in the record fails to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

The evidence fails to demonstrate that any physical, emotional, academic, or financial hardship that the applicant's daughters might experience would cause the applicant's husband to experience extreme hardship, if the girls either remained in the U.S. with him, or if they moved to Albania to be with the applicant.

The medical evidence submitted by the applicant is general and does not contain an explanation of the nature and severity of the health conditions mentioned. The medical evidence in the record also does not demonstrate that the health of the applicant's daughters or parents would be affected if the applicant moved to Albania and they remained in the U.S. The evidence fails to indicate the applicant's daughters or parents rely on the applicant for care. The evidence also fails to establish that the applicant's daughters or parents would experience extreme medical hardship if they moved to Albania to be near the applicant.

In addition, the evidence in the record fails to demonstrate that the applicant's husband would suffer hardship if his stepdaughters remained with him in the U.S. It is noted that the girls are 15 years old and in school, and the applicant's husband is unlikely to face significant childcare expenses. Furthermore, the record contains no evidence to corroborate the assertion that the applicant's family members would be unable to assist the applicant's husband in caring for his

stepdaughters, if care were needed, and the record contains no evidence to demonstrate that the applicant's husband would experience financial hardship if his stepdaughters remained with him in the U.S. The record also contains no evidence to corroborate the assertion that the applicant's husband would be unable to find work in Albania, to illustrate the applicant's living or financial situation in Albania, or to establish that the applicant would be unable to provide for her family financially if they moved there.

Although the assertions made by the applicant's husband are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Upon review of the totality of the evidence, the AAO finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the Form I-601 appeal will be dismissed.

ORDER: The appeal is dismissed.