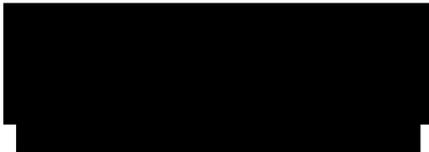


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Avenue, NW, MS 2090
Washington, DC 20529-2090
U.S. Citizenship
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Services



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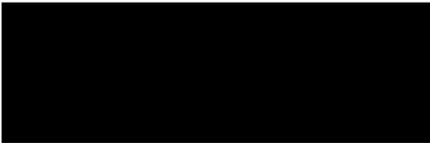
DATE: SEP 01 2011

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,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Vienna, Austria, and 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 5, 2001 (when he entered the U.S. without admission) until March 22, 2008 (when he was granted voluntary departure and left the U.S. to apply for an immigrant visa). 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 his last departure from the United States. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. 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 his U.S. citizen spouse.

In a decision dated February 9, 2009, the Officer-in-Charge concluded the applicant had failed to establish that his spouse would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

Through counsel, the applicant asserts on appeal that his U.S. citizen wife will experience extreme emotional and financial hardship if he is denied admission into the United States. To support his assertions, the applicant submits: letters written by his wife, friends and family members; documentation relating to his marriage, the birth of his child, and his family's travels to Albania; medical records for his child and psychological evaluation evidence for his wife; Albanian education and country condition information; and information relating to his, and his wife's, financial status and employment. 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-

...

(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 entered the U.S. without admission on August 5, 2001. He was unlawfully present in the U.S. for 348 days, until he applied for asylum on July 19, 2002. On February 5, 2003 the applicant filed a Form I-765, Application for Employment Authorization. Employment authorization was granted on March 12, 2003. However, the record reflects that the applicant worked in the U.S. without authorization from April 2002 to March 12, 2003. Sworn statements signed by the applicant reflect that he began working in the U.S. at Legend restaurant in 2002. The Form G-325, Biographic Information, signed by the applicant under penalty of perjury additionally states that he worked as a cook for Legend Restaurant from April 2002 through July 2003. The applicant thus worked in the U.S. without authorization from April 1, 2002 to March 11, 2003 (calculated from July 19, 2002 for unlawful presence calculation purposes). He was therefore unlawfully present in the U.S. for a total of 583 days (approximately 1 ½ years) from the time of his entry into the U.S. without inspection on August 5, 2001, to the date of his departure on August 22, 2008. Because the applicant was unlawfully present in the U.S. for more than one year, and he is seeking readmission into the U.S. within 10 years of his last departure from the United States, he 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 record reflects that the applicant married a U.S. citizen on September 7, 2005. 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 Board of Immigration Appeals (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 child 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 child will not be separately considered, except as it may affect the applicant's spouse.

The record contains two letters written by the applicant's wife reflecting that she and her husband married in September 2005, and that they have a son, born July 18, 2007 (now 4 years old). She indicates that she and her son moved to Albania with her husband on March 22, 2008. However, she and her son have since moved back to the U.S. because life in Albania was too difficult. Specifically, the applicant's wife states that her (then) infant son suffered from food allergies and needed a special baby formula that they were unable to get in Albania. As a result, her son was constantly sick, and he lost weight. She also got sick from the food in Albania. The applicant's wife states that she was born and raised in the U.S. and missed her family. She indicates further that she could not assimilate because she does not speak Albanian or understand the culture. Since returning to the U.S. in January 2009, the applicant's wife and her son have lived with her parents. The applicant's wife indicates that she worked as a certified medical assistant prior to the birth of her son, but she left the job for maternity reasons. She indicates that prior to the applicant's departure from the U.S., she relied on him to provide financially for the family. Federal tax return evidence and Social Security Administration records reflect that the applicant earned between \$7500 to around \$22,000 a year in the U.S. between 2003 and 2007. The applicant's wife now works on occasion as a waitress at her in-laws restaurant, earning \$2.75/hour. She states that she makes less than \$100/month. She states it is hard raising her son without the applicant, and she indicates that she is unable to pay for a home or for her expenses without her parents' help. She additionally states that the applicant has been unable to find work in Albania, and that she often sends the little money she earns to the applicant.

The record contains passport copies reflecting that the applicant traveled with his wife and son to Albania on March 22, 2008. The applicant's wife and son returned to the U.S. on November 8, 2008. They traveled again to Albania on December 28, 2008, and returned back to the U.S. on January 26, 2009.

Medical records reflect that prior to moving to Albania, the applicant's son was treated in the U.S. for cold and allergy-related rash symptoms. An Albanian medical record, dated March 11, 2009, indicates that the applicant's son had problems with skin-related allergic reactions and diarrhea due to food-related intolerance, that he lost weight, and that he had Angina and Bronchopneumonia. The record contains general WebMD information on angina (chest pain) and heart disease. The record also contains copies of 2009-issued Medicaid cards for the applicant's wife and son.

An April 22, 2009, psychological assessment for the applicant's wife is contained in the record. The assessment was prepared based on two interviews with the applicant's wife (on March 24th and April 11, 2009). The applicant's son was present at the first interview, and the evaluator notes his behavior and indicates that he misses his father, and that his distress upsets the applicant's wife. The evaluator observes that the applicant's wife shows symptoms of depression, generalized anxiety and confusion. Based on observations and the information provided by the applicant's wife during her interviews, the evaluator diagnoses the applicant's wife with: Psycho-social stress due to anxiety and uncertainty about the future, and severe impairment in social and occupational functioning. The evaluator gives a favorable prognosis only if the applicant is able to join his wife in the United States.

The record contains letters from the applicant's mother-in-law indicating that her daughter is emotionally distraught at not having her husband with her, and at the prospect of raising her son on her own. A letter from the applicant's sister reflects that she paid for his wife and son to travel between Albania and the U.S. in November 2008 and in January 2009, but that she is no longer able to help them financially. U.S. Department of State (DOS), Albania country conditions information is also contained in the record, as are several letters from friends of the applicant in Albania, attesting to his good moral character.

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 psychological evaluation indicates that the applicant's wife is experiencing symptoms of depression, generalized anxiety, and psycho-social stress due to anxiety and uncertainty about the future. The evaluation indicates further that the applicant's wife is experiencing severe impairment in social and occupational functioning. It is noted, however, that the evaluator takes into account only the information gathered from the applicant's wife's own comments. No reference is made to documentary or other evidence reviewed in making the diagnosis, and the evaluator makes no endorsement of the validity or accuracy of the history. The evaluator does not recommend care or treatment for the applicant's wife, and the record contains no evidence that the applicant's wife has sought, or requires psychological treatment. The AAO finds that the psychological evaluation fails to demonstrate that the applicant's wife is experiencing emotional hardship beyond that normally experienced upon separation from a family member, or that she

will suffer extreme emotional hardship in the future if the applicant is denied admission into the United States.

The evidence also fails to demonstrate that the applicant's son is experiencing emotional or physical hardship to a degree that is causing the applicant's wife to experience extreme hardship. The medical evidence contained in the record relates to baby-formula food allergies and cold/pneumonia related symptoms the child experienced in Albania. The applicant's son is now four years old, and the cold/pneumonia symptoms were temporary in nature. The record lacks evidence of any other medical problems that the applicant's son has experienced or for which he requires treatment. It is additionally noted that the record contains no evidence establishing that the applicant's wife has suffered medical problems in Albania or in the U.S.

The evidence also fails to establish that the applicant's wife would experience extreme financial hardship if the applicant's waiver application is denied. The applicant's wife claims that she earns less than \$100 a month working as a waitress at her in-laws restaurant, and that she depends on her parents to provide housing and basic amenities for her and her son. Nevertheless, the record contains evidence that the applicant's wife became a certified medical assistant in 2005, and that she worked in her profession for over two years before stopping for maternity leave reasons. Evidence submitted in connection with the applicant's Form I-130, Petition for Alien Relative, reflects that the applicant's wife previously earned \$12/hour working as a certified medical assistant, and the record fails to demonstrate that the applicant's wife is unable to return to her profession as a certified medical assistant in order to better support herself and family. Similarly, although the applicant's wife claims that the applicant is unable to find work in Albania, and that she must send money to the applicant, the record contains no evidence to corroborate this assertion. The record also contains no evidence to illustrate the applicant's living or financial situation in Albania, and fails to establish that the applicant would be unable to provide for his family financially if they moved there.

The 2008 Albania country conditions contained in the record are general, and fail to demonstrate that the applicant's wife and family would face emotional, financial or physical danger in Albania. It is noted that no 2011 DOS Travel Warnings or Alerts exist for Albania, and 2011 DOS country specific information for Albania is general and fails to demonstrate that the applicant's wife or family would experience emotional, financial or physical hardship in Albania. *See* U.S. Department of State, Albania Country Specific Information (June 20, 2011) http://travel.state.gov/travel/cis_pa_tw/cis/cis_1076.html.

Upon review of the totality of the evidence, the AAO finds that the applicant failed to establish extreme hardship to his 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 appeal will be dismissed.

ORDER: The appeal is dismissed.