

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



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Date: Office: VIENNA, AUSTRIA FILE:

IN RE: **DEC 08 2012**

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

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, 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 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 having attempted to procure entry into the United States by fraud or willful misrepresentation and under 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 his last departure from the United States. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility to reside in the United States with his wife.

In a decision, dated December 9, 2011, the field office director found that the record failed to show that the applicant's spouse would suffer hardship rising to the level of extreme as a result of the applicant's inadmissibility and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly.

In a brief on appeal, counsel states that the field office director erroneously denied the applicant's waiver application because if the hardship factors in the applicant's case were considered in the aggregate, the finding would be unequivocal that the applicant's spouse is experiencing extreme hardship as a result of the applicant's inadmissibility.

The record indicates that that applicant entered the United States on December 26, 2000 on an H-2B visa as a member of a musical group when he in fact was not a musician or a member of this group. The applicant became employed with a construction company upon entering the United States and in October 2001 he applied for asylum. The applicant's asylum application was ultimately denied and the applicant was removed from the United States on August 14, 2007.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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.

The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having entered the United States on an H-2B visa that was obtained by presenting false information about the applicant being in a musical group.

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

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.

(iii) Exceptions.

(II) Asylees. - No period of time in which an alien has a bona fide application for asylum pending under section 1158 of this title 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 indicates that the applicant entered the United States on December 26, 2000 and soon thereafter started working in the United States without authorization. In October 2001, the applicant applied for asylum, which was denied on May 23, 2005. The applicant did not depart the United States until August 14, 2007. Therefore, the applicant accrued unlawful presence from December 26, 2000 until August 14, 2007. In applying for an immigrant visa, the applicant is seeking admission within ten years of his August 2007 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(i) of the Act provides that:

- (1) 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.

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

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 [Secretary] 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.

Section 212(i) and 212(a)(9)(B)(v) waivers of the bar to admission resulting from violations of section 212(a)(6)(C) and Section 212(a)(9)(B) of the Act are dependent first upon a showing that the bar imposes an extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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 record includes: counsel’s brief; financial documentation; medical documentation, including a psychological evaluation and follow-up statement; a statement from the applicant’s spouse; and statements from other family members, co-workers, and friends.

Counsel claims that the applicant’s spouse is suffering extreme emotional hardship, in the form of depression and anxiety as well as financial hardship as a result of being separated from the applicant. Counsel also claims that relocating to Albania would cause extreme hardship because of the country conditions in Albania and that the applicant’s spouse would be separated from her mother.

The AAO finds that the record fails to support the claims made regarding the applicant’s spouse suffering extreme emotional hardship as a result of the applicant’s inadmissibility. Statements and a psychological evaluation in the record indicate that the applicant’s spouse is depressed. The record states that the applicant’s spouse is unemployed, has withdrawn from college, and is her mother’s only caretaker. The applicant’s spouse contends that she is dependent on the applicant and has difficulty making everyday decisions without an excessive amount of advice and reassurance from the applicant. The record indicates that in May 2010, the applicant was diagnosed with major depressive disorder, posttraumatic stress disorder, generalized anxiety disorder, and panic attacks.

We acknowledge that the applicant’s spouse is suffering hardships, but the record is unclear as to whether the applicant’s absence is the source of the applicant’s hardships and if so, that this hardship is above and beyond what would normally be expected upon the separation of a husband and wife. The record does not include documentation to establish that the applicant’s spouse is unemployed nor does it include financial documentation to establish the applicant’s spouse’s financial situation and how the presence of the applicant in the United States would improve this situation. Thus, the

AAO finds that the applicant has not established that his spouse will suffer extreme hardship as a result of separation.

Similarly, we do not find that the applicant has established extreme hardship to his spouse as a result of relocation. The record indicates that the applicant's spouse is concerned about relocating to Albania without her mother, but the record fails to show that her mother could not relocate with her daughter as she has yet to become a U.S. citizen after residing in the United States for over twenty years and continues to hold Albanian citizenship. The AAO also recognizes that the applicant's spouse and her mother experienced hardships while residing in Albania, until they relocated to the United States in 1991, but the record does not indicate that they would suffer extreme hardship if they resided in Albania today, more than 20 years after their departure. Furthermore, we note that the record contains many assertions regarding reported country conditions in Albania, but nowhere in the record is there documentation to support these statements nor is there documentation to show that the individuals making these assertions regarding conditions in Albania are experts on the subject. The psychological report in the record briefly makes a reference to U.S. State Department reports corroborating the difficult conditions in Albania. The current U.S. State Department Background Notes for Albania state:

Albania's economy has improved markedly over the last decade; reforms in infrastructure development, tax collection, property law, and business administration are progressing. The country was largely spared from the severe fallout of the 2008-2009 financial crisis since its economy is not heavily integrated into the Euro-Atlantic system. Economic output has slowed but remained positive in each year from 2009 to 2011.

The record does not include documentation to show that individuals with similar professional and/or educational backgrounds to the applicant and/or his spouse would not be able to find employment in Albania or that they would not have access to health care in Albania. The assertions of the applicant's spouse are relevant evidence and have been considered. However, absent supporting documentation, these assertions cannot be given great weight. *See Matter of Kwan*, 14 I&N Dec. 175, 177 (BIA 1972) ("Information contained 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 evidence generally 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Thus, the AAO finds that the record fails to show that the applicant's spouse is suffering extreme hardship as a result of the applicant's inadmissibility.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) and 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.