

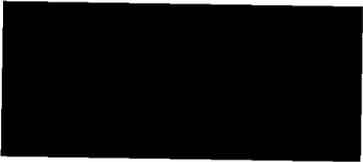
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services



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Date: **FEB 29 2012**

Office: VIENNA, AUSTRIA

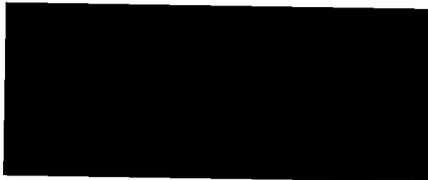
FILE: 

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 (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and section 212(i) of the Act, 8 U.S.C. § 1182(i)

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 waiver application was denied by the Officer in Charge, Vienna, Austria. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Albania who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, and section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act and section 212(i) of the Act in order to reside with his wife in the United States.

The officer in charge found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Officer in Charge*, dated August 4, 2009.

On appeal, counsel contends the officer in charge mischaracterized the record and contends that the applicant established the requisite hardship, particularly considering the applicant's wife's history of depression, the fact that her entire family lives in the United States, and country conditions in Albania.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating they were married on February 14, 2007; a letter from the applicant; letters from and her family; a letter from physician and copies of prescription medications; a psychological evaluation; copies of tax returns and other financial documents; articles addressing country conditions in Albania; photographs of the applicant and his family and of conditions in Albania; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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.

....

(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(a)(6)(C)(i) of the Act provides:

In general.—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) provides:

(1) The Attorney General [now Secretary of Homeland Security] 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 immigrant 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 permanent resident spouse or parent of such an alien. . . .

In this case, the record shows, and the applicant concedes, that he entered the United States in September 2001 using another person's passport and remained until his removal in March 2008. The record shows, and counsel does not contest, that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit and section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more.

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 this case, the applicant's wife, [REDACTED] states that her life has been falling apart since her husband was deported. She contends she went to Albania to be with her husband, but that she returned to the United States alone. According to [REDACTED] she was shocked to see all of the garbage on the streets of Albania. She states the power goes out every day and the water will also go out for a day or two. [REDACTED]

states that she and her husband tried to live with his mother in her home, but that it did not have a toilet, but rather, a hole in the ground. states that they moved in with her husband's brother, but that they lived with her husband's brother, his wife, and their three children in a one-bedroom apartment. also states that her entire family lives in the United States and that she had never been outside of the United States before her trip to Albania. In addition, states that if she relocated to Albania, she would have to give up on her goal of finishing college and she fears being unable to find a job in Albania because she does not speak Albanian and most women do not work or go to school in Albania. Moreover, states that she will suffer extreme financial hardship if her husband's waiver application is denied because she cannot afford to pay the mortgage and their bills without his income. She states she cries all the time, feels like she is "half dead," sees her physician every month or so, and has been prescribed medications for her anxiety and depression.

After a careful review of the record, the AAO finds that if relocated to Albania to avoid the hardship of separation, she would experience extreme hardship. The AAO acknowledges that has already attempted to relocate to Albania to be with her husband and was unable to adjust to living there. The AAO also acknowledges fear about not being able to find employment in Albania as the U.S. Department of State has recognized that "in many communities, . . . women were subjected to societal discrimination as a result of traditional social norms that considered women to be subordinate to men," and that women were not well represented in all occupations. *2010 Country Reports on Human Rights Practices Report, Albania*, dated April 8, 2011. In addition, the record shows that was born in the United States and that her entire family resides in the United States. According to , before her trip to Albania, she had never been outside of the United States and she does not speak Albanian. Considering all of these factors cumulatively, the AAO finds that the hardship would experience if she moved to Albania to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Regarding the emotional hardship claim, the psychological evaluation in the record shows that was evaluated on March 12, 2008, when the applicant was detained by immigration officials. The evaluation describes feelings of distress and fear about the possible separation from her husband, and concludes that is experiencing severe distress, anxiety, and depression related to her husband's possible deportation. Although the input of any medical professional is respected and valuable, the evaluation does not show that the applicant's situation is unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). Similarly, the letter from physician merely states that was treated for depression in 2004 and 2006, contends she is experiencing numerous symptoms of stress following her husband's removal from the United States, and states that she has been prescribed medication for her symptoms. Although the letter from her physician, as well as letters from her family members, confirms that is experiencing psychological and physical stress following her husband's

deportation, again, the record does not show that her hardship is unusual or beyond that which would normally be expected after a spouse's removal. Regarding the financial hardship claim, the record contains a copy of the couple's tax returns from 2007 showing that the applicant earned \$17,000 in wages and not declaring any wages for [REDACTED]. However, according to [REDACTED] Biographic Information form (Form G-3325A), dated March 12, 2007, she was working as a hairstylist since September 2006. In addition, according to the Affidavit of Support Under Section 213A of the Act (Form I-864), [REDACTED] sponsored the applicant for adjustment of status based on her annual salary of \$25,300 as a hairstylist. The psychological evaluation also notes that [REDACTED] indicated she works twenty hours per week as a hair dresser. Therefore, there is inconsistent information addressing [REDACTED] wages. Moreover, although the record contains a deed to the couple's house, there is insufficient documentation addressing the couple's regular, monthly expenses. Although the AAO does not doubt that [REDACTED] will suffer some financial hardship, without additional and consistent information addressing her wages and monthly expenses, there is insufficient documentation in the record to evaluate the extent of her hardship. Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship [REDACTED] has experienced or will experience amounts to extreme hardship.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation and the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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(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.