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

U.S. Citizenship and Immigration Services

#6

DATE: JUL 10 2012 OFFICE: VIENNA, AUSTRIA

FILE: [redacted]

IN RE: APPLICANT: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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,

Ellen C. Johnson

Perry Rhew, 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 sustained.

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 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. He was also 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 a benefit under the Act through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. Citizen spouse and children.

The Field Office Director concluded that the applicant failed to demonstrate extreme hardship to a qualifying relative and also that he did not merit a favorable exercise of discretion. *See Decision of Field Office Director* dated July 28, 2010. The application was accordingly denied. *Id.*

On appeal, counsel for the applicant contends the present separation is causing the applicant's spouse extreme hardship given her financial situation and her responsibilities towards her four children and her father, who has Alzheimer's disease, dementia, and other medical issues. Counsel additionally asserts that the applicant's spouse would experience extreme hardship if she relocated to Albania due to those familial responsibilities, her ties in the United States, and the adverse country conditions in Albania. Counsel indicates that the Field Office Director's discretionary analysis was based on an incorrect conclusion of the applicant's work history.

The record includes, but is not limited to, statements from the applicant and his spouse, letters of support from family, friends, and employers, medical, educational, and financial documents, articles on medical issues and country conditions, other applications and petitions filed on behalf of the applicant, evidence of birth, marriage, divorce, residence, and citizenship, documentation of criminal and removal proceedings, and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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.

(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.-

(I) Minors.-No period of time in which an alien is under 18 years of age shall be taken into account in determining the period of unlawful presence in the United States under clause (I).

(II) Asylees.-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.

. . . .

(v) 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 entered the United States without inspection on August 15, 1999. He filed a Form I-589, Application for Asylum and Withholding of Removal, on January 18, 2000. In proceedings before an immigration judge and the Board of Immigration Appeals (BIA) the applicant was granted voluntary departure until September 17, 2006. The applicant remained past that date, and was removed from the United States on April 15, 2008. Inadmissibility with respect to the applicant's unlawful presence is not contested on appeal. The AAO therefore finds that the applicant has accrued more than one year of unlawful presence, from August 15, 1999 to January 18, 2000, and from September 18, 2006 until April 15, 2008 and is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen spouse.[1]

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

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[1] It is noted that the applicant's mother and father are also qualifying relatives for purposes of this waiver. However, as the evidence submitted relates to hardship to the applicant's spouse, the AAO will evaluate her hardship on appeal.

> (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.

Section 212(i) of the Act provides:

> (1) The [Secretary] may, in the discretion of the [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 [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.

In the present case, the Field Office Director indicated the applicant was inadmissible under section 212(a)(6)(C)(i) of the Act. However, neither the Field Office Director's decision nor the record indicates what actions gave rise to this finding. Nevertheless, the applicant remains inadmissible under section 212(a)(9)(B)(i)(II) for which he requires a waiver.

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 applicant's spouse asserts that she lives with and takes care of her father, who is over 70 years of age, and has been diagnosed with Alzheimer's disease and dementia as well as heart problems. The spouse indicates that her father's physician recommended a home health care nurse to come and take care of him every morning, but that this was not affordable. The spouse explains she and her children live with her father and help him with his medication and daily activities. Medical records and a letter from a physician are submitted to corroborate the spouse's assertions. The spouse contends that her responsibilities with respect to her father's care are compounded by her other familial responsibilities towards her four children, including her son [redacted] who has attention deficit hyperactivity disorder (ADHD), as well as the fact that she needs to work full-time to meet her financial obligations. A letter from the spouse's employer, a letter from [redacted] physician, letters from the applicant's parents, and school records are submitted in support of these assertions. The spouse claims she has monthly expenses which include $900 for rent, $88 for car insurance, $260 for electricity, and $100 for water. She explains that due to these difficulties, she has experienced significant hardship without the applicant.

The applicant's spouse contends that she could not relocate to Albania to live with the applicant. Counsel states in the event of relocation the spouse's father, a U.S. Citizen, would also have to relocate to Albania because he has no one else to take care of him. Counsel asserts this would not be feasible because although his healthcare is paid for by Medicare in the United States, he would be unable to afford the same care in Albania. Documents on Medicare are submitted in support. Furthermore, the applicant's spouse claims that relocating her four children to Albania would also create significant difficulties because of language barriers, [redacted] specialized medical and educational needs due to his ADHD, the lack of appropriate healthcare for all four children and herself, country conditions, as well as her own inability to find employment in Albania. She explains that she and the children have visited Albania, but found it very difficult to reside there because of these issues. The applicant's spouse additionally indicates that all of her relatives reside in the United States, and she would experience emotional hardship if she were separated from them.

The record establishes that the spouse's father, a 78 year old U.S. Citizen, suffers from Alzheimer's disease, dementia, and heart problems. A letter from his physician indicates that as a result the father cannot live alone, cannot take care of himself, and needs 24 hour care. The father's medical records reveal that due to his heart problems he has a pacemaker, and that he has delusional thoughts and periods of paranoia about the government, President Bush, President Obama, and the Federal Bureau of Investigation. The record also reflects that the applicant's spouse lives with her father and provides assistance with his daily needs, in addition to caring for her four children and working full-time. The record further indicates that the spouse also has responsibilities due to her son [redacted] ADHD. A letter from the applicant's employer shows that the spouse earns less than 100% of the minimum income requirement for a family of five under U.S. Health and Human Services guidelines. *See Form I-864P, 2012 HHS Poverty Guidelines for Affidavit of Support,* March 1, 2012.

The AAO therefore finds there is sufficient evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the financial, medical, psychological or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that she would suffer extreme hardship if the waiver application is denied and the applicant remains in Albania without his spouse.

The applicant has also established that his spouse would experience extreme hardship upon relocation to Albania. The record reflects that moving the spouse's father to Albania would be difficult due to the father's healthcare issues and expenses. The U.S. Department of State notes that although medical care in Tirana has improved in recent years, it remains below western standards, and medical facilities outside Tirana have very limited capabilities. *Country Specific Information: Albania, U.S. Department of State,* January 27, 2012. The State Department further indicates that doctors and hospitals expect payment in cash at the time of service. Furthermore, the spouse's and her children's ability to communicate in Albanian has an impact on her ability to adjust to life in Albania. The record additionally reflects that the applicant's spouse has family ties in the United States.

In light of the evidence of record, the AAO finds the applicant has also established that his spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Albania.

Considered in the aggregate, the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The unfavorable factors include several immigration violations. The applicant entered the United States without inspection, remained past his authorized period of voluntary departure, and was removed to Albania by immigration officials. The applicant has also accrued more than one year of unlawful presence in the United States.[2] The favorable factors include the extreme hardship to the applicant's spouse, some evidence of hardship to the applicant's children given his inadmissibility, family ties in the United States, evidence of good character as set forth in letters from family, and residence of some duration in the United States.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.

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[2] It is noted that although in 2007 the applicant was arrested for child neglect, the charges against him were dropped.