

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

#6



DATE: OCT 23 2012

OFFICE: VIENNA

FILE:

IN RE: Applicant:

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

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 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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for being unlawfully present in the United States for one year or more, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant does not contest the inadmissibility findings, but seeks a waiver pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), to live in the United States with her husband.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director*, July 21, 2010.

In support of the appeal, the applicant's counsel submits a brief, contending USCIS misapplied the legal standard for extreme hardship, as well as new evidence. The record also contains supporting documentation for the appeal and several waiver applications, including but not limited to: hardship statements; a psychological evaluation and medical reports, including treatment and background information; birth, marriage, and naturalization certificates; financial records, including bills, bank statements, and tax returns; letters of support; and country condition information. The entire record was reviewed and considered in rendering this decision.

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

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)(1) of the Act provides:

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 [...].

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...

A waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act is dependent on a showing that the bar to admission imposes 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 husband 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 shows that in November 2004, the applicant used an Albanian passport issued in the name of another person to enter the United States and remained until August 26, 2006, when she departed to apply for an immigrant visa after having been unlawfully present for one year or more. There is evidence that, after being introduced to her husband by a mutual relative in the United States, the applicant obtained the fraudulent travel document for \$20,000 to facilitate meeting and marrying him. The record shows that she began living with the qualifying relative and his parents upon arrival, and this living arrangement continued until she left the country.

The applicant’s husband contends he is suffering emotional and financial hardship and will continue to do so while the applicant resides abroad due to her inadmissibility. The record, however, fails to contain sufficient evidence to support these claims.

Regarding the claim that he is experiencing emotional hardship due to separation from his wife, the applicant's husband provides a 2007 psychological evaluation diagnosing him with major depression due to his wife's absence based on a clinical interview during which he reported symptoms including weight fluctuation, insomnia, crying, lethargy, and inability to concentrate. Although the psychologist bases his diagnosis on objective criteria, the AAO notes in his report statements regarding the relative desirability of living here compared to living in Albania and the belief that the U.S. government has made an effort to keep the applicant and her husband apart. The report contains no treatment recommendation, but indicates that reunification with his wife will help resolve his depression. The record reflects that he is being treated for medical problems including type 2 diabetes, hypertension, and high cholesterol, and that along with medication for these conditions, his doctor has prescribed anti-depressant drugs. While the applicant provides new evidence of her husband's medical condition on appeal, there is no updated information on his psychological condition. The record reflects that, during her entire period of U.S. residence before departing, the couple lived with the qualifying relative's parents in a single household. Although the qualifying relative claims that his wife helps him maintain a prescribed diet, there is no evidence she has any special background to do so or that other members of the household are unable to fulfill this role. The AAO observes that his sense of loss reflects the common or typical results of removal or inadmissibility of a loved one, and notes that he has been able to mitigate the emotional pain of separation by moving overseas in 2008 to live with his wife in Albania for at least three years.¹

Regarding financial hardship, there is no claim on record that the qualifying relative is suffering economically due to his wife's absence (only that he will suffer such hardship due to loss of his job and related benefits in the United States, and inability to meet financial obligations, if he lives overseas). There is no evidence that the applicant was ever employed, here or abroad, or contributed earnings to the household. The record reflects that she lives in Albania with her parents and that, while he is there, her husband lives in her parents' home with her. Therefore, the record contains no evidence that without the applicant's physical presence in the United States her husband will experience financial hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. The situation of the applicant's husband, if he remains in the United States, is typical of individuals facing separation as a result of removal and does not rise to the level of extreme hardship based on the record. Based on the evidence provided, the applicant has not met her burden of establishing a qualifying relative would suffer hardship beyond the common results of inadmissibility if she is unable to live in the United States.

As regards establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the AAO notes the claims about her husband's medical and financial situation. Evidence establishes that his medical profile includes being a non-insulin dependent diabetic, in addition to having related conditions including high blood pressure, high cholesterol, and obesity. He states that absence of jobs utilizing his trade and training, lack of

¹ The appeal notes that he returned "to the United States for a brief period" for medical reasons, but does not establish whether he returned to Albania to resume living with his wife or where he currently resides.

language fluency, and conditions in Albania make his employment prospects virtually nonexistent, while local custom excludes the applicant from the job market. Supporting the applicant's concerns are U.S. government reports of country conditions including high unemployment, corruption, and a "cash economy" in which goods and services, including prescription medicine and healthcare, must usually be paid in advance. Although mere diminution in earnings or the inconvenience of needing to pursue new employment does not constitute hardship that rises to the level of "extreme," the circumstances suggest that the applicant's husband would likely have difficulty procuring employment, which would interfere with his ability to obtain medication and receive the monitoring of his chronic medical conditions that are essential to his health. While contending that economic conditions in Albania are improving, the U.S. Department of State (DOS) reports that it is still a developing country where medical care remains below western standards. *See Albania--Country Specific Information*, DOS, August 27, 2012. Further, besides lacking fluency in the local language and having no ties to Albania other than the applicant, the qualifying relative reports that his entire support network and extended family, including his parents, two adult siblings, other relatives, and friends, live in his native [REDACTED]

The record reflects that the cumulative effect of the applicant's husband's ties to the United States and absence of ties to his wife's country, his birth and lifelong residence in [REDACTED] his medical conditions, and his loss of employment, were he to relocate, rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to her inadmissibility, a qualifying relative would suffer extreme hardship by relocating abroad to reside with his wife.

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.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. 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.