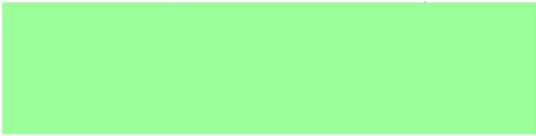




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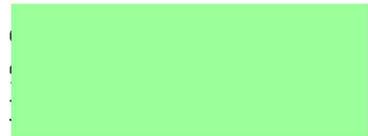
FILE:

IN RE: Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and Application for Permission to Reapply for Admission under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

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 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 having been unlawfully present in the United States for one year or more, and under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for seeking admission to the United States within ten years of departing with a removal order pending. The applicant is seeking a waiver of inadmissibility and permission to reapply for admission in order to reside in the United States with his U.S. citizen spouse. He is the beneficiary of an approved Petition for Alien Relative (Form I-130).

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) and, accordingly, also denied the Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) as a matter of discretion. *Decision of the Field Office Director, June 11, 2012.*

In support of the appeal, the applicant's counsel submits a brief contending that USCIS misapplied the legal standard for extreme hardship and also asserting that a Form I-212 is not required. The record on appeal contains new documentation, including, but not limited to: updated hardship statements and a hospital discharge summary. These augment a record consisting of documents including, but not limited to: support statements; copies of a green card and naturalization, marriage, and birth certificates; copies of tax returns, utilities receipts, and other financial information; medical prescriptions and medical records; an asylum application and related court records, including a removal order; and country condition information. The entire record was reviewed and considered in rendering this decision.

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 section 212(a)(9)(B)(v) 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 U.S. citizen spouse is the claimed qualifying relative in this case.¹ 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-Moralez*, 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

¹ It appears that the applicant's mother and father are, respectively, a U.S. citizen and a lawful U.S. permanent resident (LPR), and thus qualifying relatives as well. However, the AAO notes that neither counsel nor the applicant makes this contention, and the record contains no evidence of his parents' status.

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 v. INS*, 138 F.3d, 1292, 1293 (9th Cir. 1998) (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 the applicant lived in the United States from May 25, 2002, when he entered without inspection, until he departed on August 25, 2010. Upon being detained and placed in removal proceedings, the applicant sought asylum in December 2002. On December 5, 2006, an Immigration Judge denied his applications for asylum and withholding of removal, and issued a removal order that the Board of Immigration Appeals affirmed on October 10, 2008. The applicant filed a petition for review which the Second Circuit Court of Appeals denied on July 22, 2010, and he left the country on August 25, 2010, while a removal order was pending. The field office director found that the applicant had accepted unauthorized employment while his asylum application was pending and, therefore, accrued unlawful presence from May 2002 to August 2010, despite the asylum claim.²

Regarding extreme hardship due to separation, the applicant’s counsel contends that the applicant’s wife will suffer emotional and financial hardship if she remains in the United States while the applicant resides abroad due to his inadmissibility, but the record contains insufficient evidence to establish these claims. The AAO notes at the outset that the applicant’s wife, as well as his parents, appears to be living with him in Albania, according to the most recent documentation on record. See *Statement of Zybe and Jashar Kamolli*, August 15, 2012.

² Although it is not clear when the applicant was employed, government records indicate he has never been authorized to work in the United States. These records show he filed for employment authorization one time, in 2004 – his August 2004 application was denied in September 2004 -- and was thus not ever eligible for legal employment while here.

The only documentation of any emotional or psychological impact is a one-line, January 2012 letter from the qualifying relative's gynecologist stating that her patient is taking medication for anxiety. It states no evaluation methodology, symptoms being treated, or prognosis. Although it now appears that she has reunited with her husband in Albania, the record reflects that she and her nearly eight year old son were previously living in the United States with the applicant's parents and brother (and his family). While the record shows that she was also concerned about undergoing gall bladder treatment without her husband, documentation reflects that she underwent successful surgery in April 2012, before traveling with her son to Albania. She thus demonstrates an ability to visit the applicant to ease the pain of separation.

The applicant's wife offers tax and earnings records, as well as utility bills and other financial documents, to show that absence of her husband has harmed her financially. While documentation establishes that she had modest income, the record suggests that hers is a joint household for which no information is provided regarding overall expenses and the relative contributions being shared among the members of the extended family who live there. There is no evidence the applicant ever contributed earnings to the household, nor any indication that he is unable to support himself overseas. There is no documentation to substantiate that departure of the applicant caused his wife any financial problems. Based on the totality of the evidence, the applicant has not met his burden of establishing a qualifying relative is suffering or will experience emotional and financial hardship beyond the common results of removal or inadmissibility.

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 that the record contains limited evidence of the applicant's wife's situation before leaving Albania. While reflecting that she came to the United States on a diversity visa in January 2004 and married the applicant in June of that year, the record contains no documentation of her education, training, or employment history. Although counsel's brief in support of the applicant's Form I-212 states that the qualifying relative's parents remain in Albania, there is no indication of their living situation. Her in-laws' letter states their location as the town where she (and the applicant) were born, but gives no information regarding when in 2012 she and her son returned to Albania. Her primary connections to the United States, besides being a naturalized citizen, appear to be her son, the applicant's parents and brother, their shared residence here, and one or more part-time restaurant jobs. Other than passing references to these jobs and supportive statements from household members, the only evidence of community ties consists of doctor-patient relationships with her gynecologist and surgeon.

A record reflecting the applicant's wife lived in Albania until her late-20s suggests that she has native fluency in the local language and familiarity with the culture of the country. Although official U.S. government reporting observes that medical care is below western standards in much of the country, it also notes that care has improved in recent years. The AAO notes that the qualifying relative chose to travel there within months of having gall bladder surgery. Besides this condition, that was addressed nearly a year ago, the record contains no indication she has any other health issue or condition for which treatment is unavailable in Albania. And, there is no evidence that she is not still living in Albania with her husband and their son, as suggested in her in-laws August 2012 statement in support of this appeal.

The applicant has not shown that the cumulative effect of his wife's ties to the United States and absence of ties to their native country, her residence here, and her loss of employment, were she to relocate, rises to the level of extreme. As noted, the record reflects that she has already relocated with her son to Albania to reunite the family. The AAO thus recognizes that, while the applicant's inability to reside in the United States due to his inadmissibility would represent some hardship to his wife, she has not suffered extreme hardship by relocating to her native country to reside with her husband in the town where both grew up.

The documentation on record, when considered in its totality, reflects that the applicant has not established his wife will suffer extreme hardship if he is unable to immigrate to the United States. The AAO recognizes that the applicant's wife will endure hardship as a result of separation from the applicant. However, her situation is typical of individuals separated as a result of removal or inadmissibility, and the AAO therefore finds that the applicant has failed to establish extreme hardship to his wife as required under the Act.

The AAO notes that the field office director denied the applicant's Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, no purpose would be served in reviewing the applicant's Form I-212.

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.