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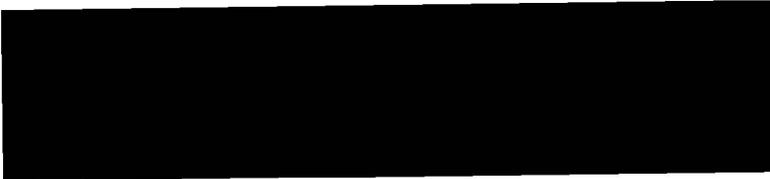
IN RE:

Applicant:



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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, 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 is the son of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks to adjust his status to that of lawful permanent resident (LPR); however, he was found to be inadmissible to the United States pursuant to § 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 admission into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to § 212(i) of the Act, 8 U.S.C. § 1182(i) in order to return to the United States to live with his family.

The officer in charge concluded that the applicant failed to establish that extreme hardship would be imposed on the applicant's father and denied the application accordingly. On appeal, counsel states that the applicant's father is suffering from depression, which may possibly cause high blood pressure and cholesterol. Counsel submits a letter from the applicant's father's physician in support of this contention. Upon review of the entire record, the AAO finds that the evidence fails to establish extreme hardship to the applicant's father.

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.

8 U.S.C. § 1182(a)(6)(C)(i). The officer in charge based the finding of inadmissibility under this section on the applicant's use of a Slovenian passport to attempt to procure admission into the United States on March 14, 2001.

Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 . . .”

8 U.S.C. § 1182(i)(1).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent. In the present case, in order for the applicant to qualify for a § 212(i) waiver of inadmissibility, he must demonstrate extreme hardship to his U.S. citizen father. Once extreme hardship is

established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996). In cases where an applicant fails to establish extreme hardship to a qualifying relative, the applicant is statutorily ineligible for relief, and no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to § 212(i) of the Act. These factors include, with respect to the qualifying relative: 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. at 566.

The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Counsel contends that the applicant used a fraudulent passport in an act of desperation in order to reunite with his family in the United States. Counsel notes that prior to the applicant’s attempted 2001 entry, he and his father had been separated for three years, which caused them both great stress. Counsel asserts that the applicant’s father is now suffering emotionally and potentially physically on account of the applicant’s absence. The record contains a letter dated July 29, 2004 written by [REDACTED] who stated that the applicant’s father exhibits symptoms that may be consistent with major depression. Dr. [REDACTED] did not indicate whether the applicant’s father had received any treatment for depression, nor did he recommend any medical or psychiatric treatment. Based on the evidence of record, the AAO is unable to conclude that the applicant’s father is suffering to a greater extent than other fathers of individuals who have been removed.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective

injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). *Perez v. INS, supra*, defined “extreme hardship” as an unusual experience, or one that exceeds the suffering that would normally be expected upon removal.

The record does not establish that the applicant’s parent faces extreme hardship if the applicant is refused admission. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, difficulties arising whenever close family members are involuntarily separated. In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.