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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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H

[REDACTED]

FILE: [REDACTED] Office: CHICAGO Date: JAN 10 2007

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Chicago, Illinois, denied the waiver application, and it 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 was found to be inadmissible to the United States pursuant to 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 procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized U.S. citizen and the father of a U.S. citizen child. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and child.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated February 28, 2005.

The record reflects that, on September 18, 1997, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on a Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. On September 18, 1997, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members. In February 1999, the applicant appeared at Citizenship and Immigration Services' (CIS) Chicago, Illinois, District Office. The applicant testified that, in 1994, he procured admission to the United States by presenting a passport that belonged to another person, [REDACTED].

On appeal, counsel contends that the applicant's spouse and child would suffer extreme hardship. *See Applicant's Brief*, dated June 21, 2005. In support of her contentions, counsel submitted the above-referenced brief, an affidavit from the applicant's spouse, citizenship documents for the applicant's spouse's family members, financial documentation and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

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

- (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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 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 Attorney General [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.

The district director based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the applicant's admission to obtaining entry into the United States by fraud in 1994. On appeal, counsel does not contest the district director's determination of inadmissibility.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(i) cases. Thus, hardship to the applicant's U.S. citizen child will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

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 section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of 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).

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).

The record reflects that, on May 31, 1996, the applicant married his spouse, [REDACTED] (Ms. [REDACTED]). Ms. [REDACTED] is a native of Macedonia who became a lawful permanent resident in 1994 and a naturalized U.S. citizen in 1997. The applicant and Ms. [REDACTED] have a one-year old son who is a U.S. citizen by birth. Ms. [REDACTED] has a 23-year old son, a 21-year daughter and a twelve-year old son from a prior relationship. The record reflects that these children reside in Macedonia. The record does not establish that these children

have any legal status in the United States. The record indicates that the applicant is in his 40's, Ms. [REDACTED] is in her 30's, and Ms. [REDACTED] may have some health concerns.

Counsel contends that Ms. [REDACTED] will suffer extreme hardship if she were to remain in the United States without the applicant because she is dependent upon the critical role of the applicant, who is the central figure in her life, she is entirely dependent upon the life she leads because of her relationship with the applicant, the applicant supports her emotionally, physically, financially and is the integral component of the family, and she would be unable to pay the mortgage payments on the condo they currently own or pay for health, automobile and life insurance without the applicant's income. Ms. [REDACTED] in her affidavit, asserts that she and her son would suffer extreme hardships because everything they have worked so hard to achieve in the United States is now at risk, the waiver denial threatens to devastate their entire family, the applicant helped her to recover from her abusive relationship with her ex-spouse, and the applicant shoulders the financial responsibilities for the family, enabling them to pay their mortgage, send money to her children in Macedonia and receive health insurance through his employment. Ms. [REDACTED] states that she never imagined she could be this happy with any man because her ex-spouse had shattered her hopes, dreams and desires and the thought of being separated from the applicant makes her sad and tense. Ms. [REDACTED] states her anguish would be unbearable if the applicant were not permitted to remain in the United States, and she would be unable to manage the responsibility of caring for their son and working to support the family and sending money to her children in Macedonia.

Financial records indicate that, in 2001, Ms. [REDACTED] earned approximately \$19, 615. The record reflects that Ms. [REDACTED] has family members in the United States, such as her parents and adult siblings, who may be able to assist her physically and financially in the absence of the applicant. The record does not reflect that the applicant's children in Macedonia are dependent on the money the applicant sends to them, that they are unable to support themselves, or that their father is unable to support them in Macedonia. The record shows that, even without assistance from the applicant or other family members, Ms. [REDACTED] in the past, has earned sufficient income to exceed the poverty guidelines for her family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While it is unfortunate that Ms. [REDACTED] would essentially become a single parent and professional childcare may be an added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon removal. While Ms. [REDACTED] may have to lower her standard of living and may be unable to keep the condo in which she currently resides, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to Ms. [REDACTED] if she had to support herself and her son without additional income from the applicant, even when combined with the emotional hardship described below.

While Ms. [REDACTED] states that she was the victim of spousal abuse and she was only able to recover from such an experience through one year of counseling and the assistance of the applicant, the record does not contain evidence that Ms. [REDACTED] has ever received psychological treatment or evaluation. Additionally, the AAO notes that Ms. [REDACTED] statements in regard to an existing psychological problem and dependency on the applicant due to those problems were made after the Form I-601 was denied and that there was no mention of any psychological problems in the affidavit, which the applicant submitted with the Form I-601. There is no evidence in the record to confirm the Ms. [REDACTED] suffers from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon removal. While it is unfortunate that Ms. [REDACTED] will be separated from the applicant and she will witness

her son's separation from the applicant, this is not a hardship that is beyond those commonly suffered by aliens and families upon removal. Additionally, the record reflects that Ms. [REDACTED] has family members, such as her parents and adult siblings, in the United States who may be able to assist her physically and emotionally in the absence of the applicant.

The AAO notes that, prior to the birth of the applicant's and Ms. [REDACTED] son, Ms. [REDACTED] asserted she would suffer extreme hardship because she was undergoing fertility treatment in the United States. Medical documentation confirms that Ms. [REDACTED] underwent fertility treatments. On appeal, counsel and Ms. [REDACTED] do not assert that the fertility treatments are ongoing or that this is a hardship Ms. [REDACTED] will suffer. Moreover, while it is understandable that Ms. [REDACTED] and the applicant may be unable to continue fertility treatments, this is not a hardship beyond that commonly suffered by aliens and families.

Counsel asserts that Ms. [REDACTED] would suffer extreme hardship if she accompanied the applicant to Albania because the situation for truck drivers, the applicant's chosen profession, is different than in the United States, her husband will not receive health insurance through his employment, the money they have saved in their retirement account would have very little value, the applicant's salary in Albania would be very little and would not be nearly enough to support even a marginal lifestyle or additional benefits the applicant currently receives in the United States, she does not want to be uprooted from her life in the United States, she and her son will not have the opportunities they have in the United States, and she will be separated from her siblings and U.S. citizens parents. Ms. [REDACTED] in her affidavit, states that she would be separated from her parents who enjoy life in the United States and her entire extended family who reside here. She states that she wants to be there for her parents as they get older. She states she has never resided in Albania except for vacations and it would be extremely difficult for her to simply abandon the life she has established in the United States and live in a land that is foreign to her.

There is no evidence in the record to suggest that the applicant and Ms. [REDACTED] would be unable to obtain any employment in Albania. There is no evidence in the record to confirm that Ms. [REDACTED] suffers from a physical or mental illness for which she would be unable to receive treatment in Albania. While the hardships Ms. [REDACTED] faces are unfortunate with regard to adjusting to a lower standard of living, separation from friends and family, being uprooted from her life in the United States, losing the benefits associated with the applicant's employment in the United States and missing opportunities available in the United States, these hardships are what would normally be expected by any spouse accompanying a removed alien to a foreign country.

The AAO notes that, in 1999, Ms. [REDACTED] asserted she would suffer extreme hardship if she returned to Albania with the applicant because of the crime rate and domestic riots in Albania. On appeal, counsel and Ms. [REDACTED] do not assert that this is a hardship Ms. [REDACTED] will suffer.

Additionally, the AAO notes that, as U.S. citizens, the applicant's spouse and son are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, Ms. [REDACTED] would not experience extreme hardship if she remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused

admission. Rather, the record demonstrates that Ms. [REDACTED] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme hardship*,” Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. 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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). 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(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.