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

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date:

APR 24 2008

IN RE:

Applicant:

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:

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 waiver application was denied by the Director of the California Service Center and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Macedonia who was 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), which the director denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the Director*, dated March 24, 2006. The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility.

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

- (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.

The record reflects that the applicant attempted to enter the United States as a passenger in a vehicle by presenting to an U.S. immigration inspector a Canadian citizenship card, and that during secondary inspection he admitted that he did not have Canadian citizenship. Based on the record, the AAO finds the applicant inadmissible under section 212(a)(6)(C) of the Act for seeking admission into the United States by willfully misrepresenting a material fact, his true identity, to a U.S. immigration inspector.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

Section 212(i) of the Act provides that:

- (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.

A section 212(i) waiver of the bar to admission resulting from violation of section 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 of the applicant. Hardship to an applicant is not a consideration under the statute, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized 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).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant’s father must be established in the event that he joins the applicant, and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record contains affidavits, letters, medical reports, a medical appointment card, photographs, employment letters, income tax records, and other documents.

In the affidavit sworn and subscribed on September 17, 1999, the applicant’s father states that he has been a lawful permanent resident of the United States since 1987 and that he would experience extreme hardship if his son were not allowed to live in the United States because he relies on his son emotionally, for medication, and for work around the house. The applicant’s father states that he has two sons, the applicant and [REDACTED] and they are a strong family unit that has been together for many years. Separation from the applicant, he claims, would affect him psychologically and physically and would worsen his medical condition.

In the affidavit dated November 5, 2004, the applicant’s father states that he is married. He states that the applicant studied electrical engineering at the University of Prishtina in the Province of Kosova. He states that the applicant was a teacher from 1974 to 1989, until Serbs closed the school. He states that the applicant, who is divorced, has a son and that he and his wife raised the boy who is now 15 years old. The applicant’s father states that Agim is a naturalized citizen of the United States and a homeowner in Shelton. He states that [REDACTED] and his wife own three rental homes, their current home, and a small strip mall where they have a restaurant. He states that he currently lives with the applicant most of the week and with Agim on weekends. The applicant’s father indicates that he has a daughter living in Macedonia who is struggling financially, a daughter living in Connecticut who operates a bakery on the first floor of her house, and a daughter living in Austria. He states that he petitioned for his wife to come to the United States. The applicant’s father conveys that he has cardiomyopathy. He indicates that he enjoys living with the applicant as he does the shopping,

prepares meals, and reminds him to take medicine. He states that they live in a caretaker's home where his son looks in on him throughout the day.

The letter dated October 22, 2004 by First Country Bank shows the applicant and his father has having \$100.00 and opening their account on October 22, 2004.

The affidavit dated November 1, 2004 by the applicant's employer states that the applicant has been an employee since 1996, living at the caretaker's cottage near the main house. He states that the applicant's father returned to the United States in October of this year and is also staying at the guest house. He states that the applicant checks in on his father during the day and that the applicant has family living nearby. He states that the applicant and his father have a close relationship.

The affidavit of support dated May 7, 2001 reflects that the applicant's father lived with his son and his daughter-in-law at Shelton, Connecticut, for 15 years.

In the record there are medical reports, with English translations, from Struga, Macedonia. The document dated January 23, 1998 conveys ultrasonic findings regarding the applicant's father. The medical records dated July 28, 2004 state that the applicant's father had calculose holecistus surgery two months ago. The Special Hospital for Orthopedic Surgery and Traumatology Ohrid – Republic of Macedonia, dated May 22, 2002, conveys that the applicant's father requires physical therapy. The translation of the medical finding and opinion dated August 23, 2004 states that the clinical diagnosis is "Uroinfectio – other text is unreadable." The medical report dated October 13, 2004 by [REDACTED] states that the diagnosis is "., Colica renalis bill. BPH,," The medical report translated on January 15, 2005 states that the applicant's father's left hand joint was fractured.

The record also contains medical records by [REDACTED] M.D., a physician who is located in the United States. The November 3, 2004 letter by [REDACTED] conveys that he recently assumed the medical care of the applicant's father, who has a history of cardiomyopathy, prostatic hypertrophy, diabetes mellitus, gout, and lumbar disc disease. [REDACTED] states that the medical conditions of the applicant's father requires him to have a family caretaker on a daily basis to assist with medications, surveillance of his condition, and custodial care. The medical appointment card shows the applicant's father is to have an appointment with [REDACTED] on February 15, 2005. The medical notice dated September 29, 2003 states that the applicant father had undergone the "surgery operation cholecystectomy."

The record indicates that the applicant's father takes advil bid, allopurinol 100 mg/d, bromazepam 3 mg hs sleep, terazosin 2 mg/d, and verapamil 80 mg bid.

On appeal, counsel states that the relatives of the applicant's father have either left Macedonia to live in the United States or plan to leave Macedonia. He states that the applicant's father has adult children living in the United States, and has filed a petition for his wife and for one of his daughters, who lives in Macedonia, to immigrate to the United States. He states that the applicant would be the only relative living in Macedonia, and that the applicant's father would have to choose between living with the applicant or the rest of the family in the United States. Counsel states that the applicant fled from Macedonia because he feared persecution and that the applicant's father would become embroiled in whatever problems the applicant has in Macedonia. He states that the applicant's father, on account of his age, would be dependent upon the applicant in Macedonia.

Counsel states that the applicant has not lived in Macedonia for more than a decade and his employment prospects are not favorable. Counsel states that the applicant presently cares for his father and they live comfortably in a guest house. If the applicant's waiver were denied, counsel states that the applicant's father would require a new living arrangement and a new caretaker in the United States or would follow the applicant to an uncertain future in Macedonia. Counsel states that the applicant's father has health problems and that the United States Department of State report on Macedonia notes that the overall quality of hospitals and care in Macedonia falls below that of the United States and western European countries.

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

The record fails to establish extreme hardship to the applicant's father if he were to remain in the United States without the applicant.

The AAO finds that the documentation in the record is not sufficient to demonstrate that the health problems of the applicant's father require his son to provide daily care. Although the record conveys that the applicant's father lives with the applicant during weekdays, it also shows that the applicant's father had lived with his son [REDACTED] and his daughter-in-law for 15 years and that he continues to live with them on weekends. No evidence in the record establishes that the applicant's father is unable to live full-time with Agim and his family, or with the daughter who owns the bakery on the first floor of her house. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

With regard to family separation, courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, courts in the United States have held that separation from one's family need not constitute extreme hardship. For instance, in *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families in *Guadarrama-Rogel v. INS*, 638 F.2d 1228, 1230 (9th Cir. 1981) (separation of parents from alien son is not extreme hardship where other sons are available to provide assistance); and in *Dill v. INS*, 773 F.2d 25 (3rd Cir. 1985), the Third Circuit affirmed the BIA's decision in finding no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the BIA stated the petitioner "is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child."

The record conveys that the applicant's father is very concerned about separation from his son. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's father, if he remains in the United States, is typical to individuals separated as

a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be experienced by the applicant's father, is unusual or beyond that which is normally to be expected upon removal. *See Sullivan, Guadarrama-Rogel, and Dill, supra.*

The record is insufficient to establish that the applicant's father would experience extreme hardship if he were to join his son to live in Macedonia.

The conditions in the country where the applicant's father would live if he joined his son are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

The record reveals that from 1998 to 2005 the applicant's father has received medical care and surgery while in Macedonia. Although counsel contends that the medical facilities in Macedonia are of a lower quality than in the United States, "second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984).

Counsel claims that the applicant would not find employment in Macedonia. Difficulties in obtaining employment in a foreign country are not sufficient to establish extreme hardship. *See, e.g., Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (difficulty in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); and *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) ("difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment").

Furthermore, "[g]eneral economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien." *Kuciamba v. INS*, 92 F.3d 496 (7th Cir. 1996), *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir.1985).

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.