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U.S. Department of Homeland Security
20 Massachusetts Avenue NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: CALIFORNIA SERVICE CENTER

Date: **MAY 21 2008**

IN RE:

Applicant:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by using a Greek passport and nonimmigrant visa in someone else's name. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen spouse.

The director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Director's Decision*, dated May 5, 2006.

On appeal, the applicant, through counsel, asserts that "[t]he Service erred in denying the Petitioner's I-601 Application for Waiver. The Petitioner demonstrated that he and his spouse would endure hardship if he were forced to depart from the United States." *Form I-290B*, filed May 18, 2006.

The record includes, but is not limited to, counsel's appeal brief, affidavits from the applicant and his wife, the applicant's marriage certificate, a laboratory report on the applicant's wife, and a letter from [REDACTED] M.D., regarding the applicant's father-in-law's medical condition. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

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

Section 212(i) of the Act provides, in pertinent part, that:

- (i) (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 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 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...

In the present application, the record indicates that on December 24, 2000, the applicant entered the United States by presenting a Greek passport and nonimmigrant visa in someone else's name. On December 4, 2003, the applicant married [REDACTED] a United States citizen, in Massachusetts. On August 23, 2004, the applicant's wife filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) and Form I-601. On April 19, 2005, the applicant's Form I-130 was approved. On May 5, 2006, the director denied the applicant's Form I-485 and Form I-601, finding the applicant had failed to demonstrate extreme hardship to his qualifying relative.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 the alien himself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse. 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 *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

Counsel contends that the applicant's wife will suffer extreme hardship if the applicant is removed from the United States. *See counsel's brief*, filed June 21, 2006. Counsel states that the applicant's wife "is a US citizen who has all of her family ties in the United States. [The applicant's wife] has acted as the sole caretaker for her seriously ill mother and father." *Id.* The AAO notes that the applicant established that his father-in-law had a triple vessel coronary artery bypass on March 15, 2006; however, [REDACTED] released the applicant's father-in-law "from [his] care. He is to follow up with his cardiologist...and his primary care physician." *Letter from [REDACTED] UMass Memorial*, dated June 1, 2006. The AAO notes that other than counsel's and the applicant's wife's statements that the applicant's mother-in-law suffers from "heart disease, diabetes, kidney disease, neuropathy-nerve damage causing weakness of the muscles, and blindness in her eyes," there was no medical documentation submitted establishing that the applicant's mother-in-law is seriously ill. *See counsel's brief, supra; see also affidavit from [REDACTED]* dated June 8, 2006. Additionally, neither of the applicant's in-law's provided a statement or an affidavit regarding how the applicant and/or their daughter provides care for them. Counsel claims that the applicant's wife "has severe health problems since she is an insulin-dependent diabetic...[The applicant's wife] has also frequented the

emergency room on numerous occasions due to health issues caused by the diabetes such as kidney infections and urinary tract infections.” *Counsel’s Brief, supra*. The AAO notes that other than a laboratory report which establishes that the applicant’s wife had high blood sugar on December 22, 2005; there was no other medical documentation submitted regarding the applicant’s wife’s medical condition. Additionally, the AAO notes that there was nothing from a doctor indicating exactly what the medical issues are, any prognosis or what assistance is needed and/or given by the applicant. The applicant’s wife states that she “would not be able to relocate to Albania due to [her] own health issues.” *Affidavit from [REDACTED] supra*. The AAO notes that there was no documentation submitted establishing that the applicant’s wife could not receive treatment for her medical conditions in Albania or that she has to remain in the United States to receive her medical treatments. Counsel claims that the applicant’s wife is “financially, physically, and emotionally [dependent] on her husband.” *Counsel’s Brief, supra*. The AAO notes that the applicant has not established that his wife has no transferable skills that would aid her in obtaining a job in Albania, or that the applicant has no family ties in Albania. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she accompanied him to Albania.

In addition, counsel does not establish extreme hardship to the applicant’s United States citizen spouse if she remains in the United States, with access to adequate medical care and in close proximity to her parents. As a United States citizen, the applicant’s wife is not required to reside outside of the United States as a result of denial of the applicant’s waiver request. The applicant’s wife states that the applicant provides her with financial support and that he is responsible for the household expenses. *See affidavit from [REDACTED] supra*. No documentation was submitted to establish the household expenses or the applicant’s financial contribution. The AAO also notes that it has not been established that the applicant will be unable to contribute to his wife’s financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to his wife if she remains in the United States.

United States court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. In *Hassan, supra*, the Ninth Circuit Court of Appeals held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant’s United States citizen wife will endure hardship as a result of separation from the applicant. However, her situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s spouse caused by the applicant’s inadmissibility to the United States. 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(a)(6)(C)(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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.