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20 Mass, Rm. 3000,
Washington, DC 20529

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U.S. Citizenship
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[redacted]

FILE: [redacted] Office: CHICAGO Date: SEP 28 2006

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Interim 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 Macedonia (Yugoslavia at the time of attempted entry into the United States) 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 attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. 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 children.

The interim 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 Interim District Director*, dated August 4, 2003.

The record reflects that, on July 3, 1990, at the Chicago, Illinois, Port of Entry, the applicant applied for admission into the United States. The applicant presented a counterfeit Italian passport under the name [redacted]' in order to obtain admission as a Visa Waiver nonimmigrant visitor. The applicant was found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for having attempted to procure admission into the United States by fraud. The applicant was placed into proceedings when he indicated that he feared returning to his home country. On February 4, 1991, the immigration judge denied the applicant's applications for asylum and withholding of removal and ordered the applicant removed from the United States. The applicant filed an appeal with the Board of Immigration Appeals (BIA). On June 30, 1994, the BIA dismissed the applicant's appeal. The applicant failed to present himself for removal or to depart the United States and has since remained in the United States. On November 14, 1996, the applicant married his U.S. citizen spous[redacted]On September 26, 1997,[redacted]iled a Petition for Alien Relative (Form I-130) on behalf of the applicant. On March 6, 1998, the applicant's first U.S. citizen son was born. On August 19, 1998, the applicant filed a motion to reopen proceedings with the immigration judge. On October 2, 1998, the immigration judge denied the applicant's motion to reopen. The applicant appealed the denial of the motion to reopen with the BIA. On November 20, 1999, the applicant's second U.S. citizen son was born. On December 6, 1999, the BIA dismissed the applicant's appeal of the denial of the motion to reopen. On March 21, 2000, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on the Form I-130. On May 29, 2002, the applicant appeared at Citizenship and Immigration Services' (CIS) Chicago District Office and admitted that he had attempted to obtain admission to the United States by fraud. On October 15, 2002, the Form I-130 was approved. On June 19, 2003, 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.

On appeal, counsel contends that the applicant's spouse would suffer extreme hardship. *See Applicant's Brief,* dated September 18, 2003. In support of his contentions, counsel submitted a brief, affidavits from the applicant's family members and copies of documents previously submitted. 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.

The interim district director based the applicant's finding of inadmissibility on the applicant's admitted attempt to procure admission into the United States in 1990. Counsel does not contest the interim district director's determination of inadmissibility.

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

> (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 record reflects that [redacted] is a citizen of the United States whose parents were natives and citizens of Yugoslavia. It appears that [redacted] resided in Yugoslavia during her formative years before returning to the United States. The applicant has an eight-year old son and a six-year old son who are both U.S. citizens by birth. The record reflects further that the applicant is in his 30's, [redacted] in her 20's and there is no indication that [redacted] or the applicant's children have any health concerns.

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. It is noted that Congress specifically did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Thus, hardship to the applicant's U.S. citizen sons will not be considered in this decision, except as it may affect their mother, 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 at 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).

Counsel asserts that [redacted] would suffer hardship if she were to remain in the United States without the applicant because the applicant is the sole provider for the family, her education is limited, as are her employment opportunities and it would be very difficult to raise and support her two children without the applicant. Counsel states that the removal of the applicant would impose significant financial strain on Ms. [redacted] and the family's standard of living would inevitably undergo a dramatic deterioration.

There is no indication in the record that [redacted] would be unable to earn *any* income. The record reflects that [redacted] has family members, such as her mother and siblings, as well as relatives of the applicant, who may be able to support her financially in the absence of the applicant. While it is unfortunate that [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 deportation. Counsel and [redacted] do not assert, and there is no evidence in the record to suggest, that [redacted] her children suffer from a physical or mental illness that would cause her to suffer hardship beyond that commonly suffered by aliens and families upon deportation. Moreover, according to the record, [redacted] has family members in the immediate vicinity to support her emotionally and physically in the absence of the applicant.

Counsel contends that [redacted] would suffer extreme hardship if she were to return to Macedonia with the applicant because she has resided in the United States for most of her life, she would not have her or the applicant's family's support in Macedonia, she would be separated from family members upon whom she is emotionally dependent, her children would be relocating to a foreign environment that deprive them of countless opportunities available in the United States, there is a potential threat to the family as ethnic Albanians, violence and discrimination against women is a problem in Macedonia, the family's financial situation would suffer and she would be subjected to a lack of adequate maternal care if she were to become pregnant.

In asserting that [redacted] would be subjected inadequate care if she were to become pregnant in Macedonia, counsel cites to a U.S. Department of State report that Macedonian physicians are trained to a high standard. The U.S. Department of State report to which counsel cites indicates that *some* maternity

hospitals facilities are considered less than adequate. *U.S. Department of State, Bureau of Consular Affairs,* September 9, 2003. However, the current report does not make such an indication but does state that most hospitals and clinics are generally not equipped and maintained to the same standard as U.S. facilities. *U.S. Department of State, Macedonia, 2006,* http://travel.state.gov/travel/cis_pa_tw/cis/cis_956.html. As discussed above, there is no evidence in the record to suggest that [redacted] or her children suffer from a physical or mental illness for which they would be unable to receive adequate care in Macedonia. While it is unfortunate that Macedonian clinics and hospitals do not meet U.S. standards, it is a hardship that would normally be expected with any family accompanying a deported alien to a foreign country.

While there is evidence that there is some societal discrimination against ethnic minorities, current country conditions reports indicate that the law provides for equal rights for all citizens regardless of their gender, race, disability, or social status. *United States Department of State Country Reports on Human Rights Practices, Macedonia, 2005*, www.state.gov/g/drl/rls/hrrpt/2005/61662.htm. The evidence indicates that violence against women and lack of educational or employment opportunities to women were at the hands of the woman's husband or family members and [redacted] has not claimed that she suffers any violence or oppression at the hands of her husband or her family members. While there is evidence that there is violence and discrimination against minorities such as Albanians, current country conditions reports indicate that the government investigates and prosecutes such violations. *United States Department of State Country Reports on Human Rights Practices, Macedonia, 2005*, www.state.gov/g/drl/rls/hrrpt/2005/61662.htm.

While the hardships [redacted] faces are unfortunate, the hardships she faces with regard to adjusting to the economy, separation from friends and family and her children's adjustment to a foreign environment and loss of the opportunities available to them in the United States, are what would normally be expected with any spouse accompanying an alien to a foreign country. Finally, the AAO notes that, even if [redacted] had established she would suffer extreme hardship by accompanying the applicant to Macedonia, as U.S. citizens, the applicant's spouse and children 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, [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 [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 an 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.