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Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship and Immigration Services

[redacted]

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FILE: [redacted] Office: VIENNA Date: JUL 28 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Vienna, 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 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 to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant was further found inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude.[1] The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

The officer-in-charge concluded that the applicant 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 Officer-in-Charge*, dated January 9, 2007.

On appeal, counsel for the applicant contends that the applicant's wife will suffer extreme hardship if the applicant is prohibited from entering the United States. *Brief from Counsel*, dated February 5, 2007.

The record contains a statement from counsel in support of the appeal; reports on conditions in Albania; tax record and a lease for the applicant and his wife; a copy of the applicant's passport; a statement from the applicant's wife; a copy of the applicant's marriage certificate; copies of immigration documents for the applicant's family members; a copy of the applicant's birth certificate; documentation in connection with the applicant's prior application for asylum and proceedings in Immigration Court, and; information regarding the applicant's entry to the United States using a fraudulent passport. The entire record was reviewed and considered in rendering this decision.

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.

Section 212(i) of the Act provides that:

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[1] The applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act for his conviction for assault and battery under section 28.276 of the Michigan Penal Code. However, while a conviction based on his original charge for assault with a dangerous weapon would likely have been a crime involving moral turpitude, his actual conviction for assault and battery (simple assault) is not. *See In the Matter of P-*, 3 I&N Dec. 5, 7 (BIA 1947). Thus, the record does not support that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, and he therefore does not require a waiver of inadmissibility under section 212(h) of the Act.

> (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 the applicant entered the United States using a fraudulent passport in or about April 2002. Accordingly, the applicant 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 to procure a visa, other documentation, or admission or other benefit provided under the Act by fraud or willful misrepresentation. The applicant does not contest his inadmissibility on appeal.

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 the applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

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).

On appeal, counsel for the applicant contends that the applicant's wife will suffer extreme hardship if the applicant is prohibited from entering the United States. *Brief from Counsel*, dated February 5, 2007. Counsel states that the applicant's wife relocated to Montenegro to help her brother, as she was unable to maintain her brother's restaurant or her residence in the United States. *Id.* at 2. Counsel indicates that the applicant's wife's children were "spread among other relatives" due to her absence. *Id.* Counsel explains that the applicant's wife's children are "mystified" as to why their family has been torn apart. *Id.* at 3. Counsel contends that the applicant's wife and her children will

suffer if the applicant's wife cannot raise them in the United States rather than in an unfamiliar, foreign environment. *Id.* Counsel emphasizes that the applicant's wife is experiencing significant emotional hardship due to the applicant's absence. *Id.* at 3. Counsel states that the applicant's brothers and their families are experiencing emotional consequences due to separation from the applicant. *Id.*

Counsel suggests that the officer-in-charge failed to reference current legal precedent. *Id.* Counsel indicates that the present matter compares favorably with the decision of the Board of Immigration Appeals in *In Re Jesus Rodarte-Espinoza*, 21 I&N Dec. 150 (BIA 1995). *Id.* Counsel asserts that, when factors are considered in aggregate, the applicant has shown that his wife will experience extreme hardship if the present waiver application is denied. *Id.* at 4.

The applicant submitted a letter from his brother-in-law that describes hardships to his wife. *Statement from the Applicant's Brother-in-law*, undated. The applicant's brother-in-law explained that he is imprisoned in Montenegro which has had an emotional impact on the applicant's wife. *Id.* at 1. He provided that the applicant's wife has experience significant psychological hardship due to the applicant's departure from the United States. *Id.*

The applicant's wife stated that she came to the United States with her family when she was two years old. *Statement from the Applicant's Wife*, dated June 9, 2006. She stated that she has become aware that conditions are poor in Albania since she returned there, including poverty and a lack of health standards. *Id.* at 1. She explained that she must have food specially prepared so that she does not become ill. *Id.* She stated that the area where she is residing does not have electricity during parts of the day. *Id.* She indicated that wood is used for heat when electricity is not available. *Id.*

The applicant's wife explained that she has three children who are ages 18, 16, and 13. *Id.* at 2. She stated that the applicant participates in their development and that they need him. *Id.*

The applicant's wife explained that she has numerous relatives in the United States including her mother, three brothers and their families, two sisters and their families, aunts, uncles, nieces, and nephews. *Id.*

The applicant's wife stated that her brothers gave her and the applicant a restaurant because they are "well-off" and they wanted to help her and the applicant. *Id.* at 3. She explained that her brothers are managing her restaurant while she and the applicant are in Albania, but that they are unable to do so indefinitely. *Id.* She indicated that she may lose the restaurant which is their only source of income. *Id.*

The applicant's wife expressed that she requires the applicant's companionship and she wishes to have his comfort in everyday life. *Id.*

The applicant stated that that he came to the United States due to the fact that his mother was ill and he wished to be with her. *Statement from the Applicant*, undated. The applicant indicated that he is close with his wife and stepchildren and that he wishes to be with them in the United States. *Id.* at 2.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if he is prohibited from entering the United States. The applicant's wife contends that she will endure economic hardship if the applicant is not permitted to return to the United States. The applicant's wife specifically noted that she had difficulty operating a restaurant that her brothers gave to her. Yet, the applicant has not provided sufficient evidence to allow the AAO to assess his wife's financial circumstances. The applicant has not described the restaurant his wife owns or provided financial data for the establishment. Thus, the record does not show whether the business is sufficiently profitable to allow the applicant's wife to hire individuals other than her brothers to help operate the restaurant. Nor has the applicant clearly shown his wife's economic needs. The applicant has not asserted or shown that his wife is unable to engage in employment to help meet her needs. As the applicant's wife's children were ages 18, 16, and 13 as of June 9, 2006, it is unlikely that she would require childcare services in order to engage in employment. Thus, the applicant has not shown that his wife would experience significant economic hardship should she reside in the United States without him.

The applicant's wife expressed that she is close with the applicant and that she wishes to reside with him and her children. The AAO acknowledges that the separation of family often involves significant emotional consequences. However, the applicant has not distinguished his wife's emotional hardship from that which is commonly experienced by those separated from family due to the inadmissibility of a spouse. U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS*, *supra,* 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 record contains references to hardships that the applicant's wife's children will face should the applicant remain outside the United States. Direct hardship to an applicant's stepchild is not a basis for a waiver under section 212(i)(1) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. It is reasonable that the applicant's stepchildren will encounter emotional challenges due to separation from the applicant or their mother, or should they relocate to Albania to maintain family unity. Yet, the applicant has not presented sufficient information regarding his stepchildren such that the AAO can determine their level of independence and the likely affect on them should they continue to lives in their present circumstances. Thus, the applicant has not sufficiently shown that they would encounter hardship to a degree that elevates his wife's challenges to extreme hardship.

The AAO has considered all elements of hardship to the applicant's wife in aggregate should she reside in the United States without the applicant. The applicant has not shown by a preponderance of the evidence that his wife's hardship will rise to the level of extreme hardship.

The AAO acknowledges that conditions in Albania can be difficult and that the applicant's wife has faced challenges residing there. It is reasonable that the applicant's wife would endure significant emotional hardship should she reside apart from her three children and extensive family in the United States. The applicant's wife indicated that she has resided in the United States from the age of two, and thus she would face challenges in adapting to life in a different culture and region. While the applicant has not shown that his wife would be unable to meet her economic needs in Albania, it is evident that economic opportunities are not as readily available as in the United States. Accordingly, the record shows that the applicant's wife would experience significant hardship should she continue to reside in Albania. However, as a U.S. citizen, she is not required to do so. As the applicant has not shown that his wife would experience extreme hardship should she return to the United States, he has not established that denial of the present waiver application "would result in extreme hardship" to his wife. Section 212(i) of the Act.

It is noted that the record suggests that that the applicant's mother is a qualifying relative. However, the applicant has not asserted or shown that his mother would experience hardship should he be compelled to reside outside the United States.

Counsel indicates that the present matter compares favorably with the decision of the Board of Immigration Appeals in *In Re Jesus Rodarte-Espinoza*, 21 I&N Dec. 150 (BIA 1995). However, counsel did not specifically compare the facts of the present matter to those under consideration in *In Re Jesus Rodarte-Espinoza*. It is noted that *In Re Jesus Rodarte-Espinoza* involved relief under section 212(c) of the Act, and the BIA did not assess hardship to the respondent's relatives. Thus, *In Re Jesus Rodarte-Espinoza* does not support that the applicant has established extreme hardship to his wife.

All elements of hardship to the applicant's wife have been considered individually, and in aggregate. Based on the foregoing, the applicant has not provided sufficient documentation to show that his wife will experience extreme hardship should she remain in 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(i)(1) 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.