**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS2090
Washington, DC 20529-2090

**identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

**PUBLIC COPY**

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: CHICAGO Date: NOV 23 2009

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Ground of Inadmissibility under section 212(i) of the Immigration and Nationality Act (the 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).

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Chicago Field Office Director. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Albania. On March 8, 2005, the applicant attempted to enter the United States by presenting the Italian passport of another individual within which the applicant's photograph had been substituted. *Record of Sworn Statement*, signed and sworn to by the applicant on March 8, 2005. The applicant was found 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 having attempted to gain admission to the United States by fraud or willful misrepresentation. The applicant does not contest his inadmissibility, but seeks a waiver pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed upon his wife and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director,* dated April 14, 2009.

On appeal, counsel claims that the field office director ignored substantial evidence submitted by the applicant. *Form I-290B, Notice of Appeal*, signed by counsel on May 14, 2009. On the Form I-290B, counsel indicated that he would submit a brief or additional evidence to the AAO within 30 days. To date, over five months later, the AAO has received nothing further from counsel or the applicant. With the waiver application, counsel initially submitted evidence including, but not limited to, statements of the applicant and his wife, their relatives and friends; statements from their joint bank, insurance, and utilities accounts; a printout of airfares for flights between Chicago, Illinois and Albania; and numerous reports on conditions in Albania. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides that:

> 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, in pertinent part, that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the [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 [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 . . . .

To be eligible for the waiver of inadmissibility at section 212(i) of the Act, applicants must demonstrate that the bar to their admission would cause extreme hardship to a qualifying relative, that is, a U.S. citizen or lawful permanent resident spouse or parent of the applicant. Section 212(i) of the Act, 8 U.S.C. § 1182(i). The plain language of the statue indicates that hardship to applicants themselves or to their children is not relevant except as it results in hardship to a qualifying relative in the application. *Id.* In addition, extreme hardship must be established both if the qualifying relative remains in the United States without the applicant and if the qualifying relative accompanies the applicant to his or her native country. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-68 (BIA 1999) (considering the hardships of both family separation and relocation).

Extreme hardship requires significant hardships over and above the normal economic and social disruptions involved in the separation of family members due to deportation or exclusion. *Matter of Pilch*, 21 I&N Dec. 627, 633 (BIA 1996). For example, the emotional difficulty caused by severing family and community ties is a common result of deportation and does not necessarily constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. at 631. In addition, financial detriment alone will not establish extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981); *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (citing *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978)).

However, extreme hardship is not a term of "fixed and inflexible meaning, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565. The Board of Immigration Appeals (BIA) has set forth a nonexclusive list of factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative. These factors include: family ties to U.S. citizens or lawful permanent residents in the United States; family ties outside of the United States; the conditions in the country where the qualifying relative would relocate and the extent of the qualifying relative's ties to 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. *See id.* at 565-66 (and cases cited therein). Moreover, "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-,* 21 I&N Dec. at 383.

The record in this case provides the following, pertinent facts. The applicant is a 27 year-old Albanian citizen. After his attempt to enter the United States using an Italian passport, the applicant expressed fear of returning to Albania and was referred to immigration court. The immigration judge denied his application for asylum in 2007 and the BIA dismissed his appeal on February 23, 2009. While the applicant's asylum proceedings were pending, he married his U.S. citizen wife on January 18, 2008. The applicant's wife is 20 years old and was born in the United States. The applicant's wife filed a Form I-130, Petition for Alien Relative, on the applicant's behalf, which was approved on December 9, 2008.

Counsel initially asserted that the applicant's wife would suffer extreme hardship if she relocated to Albania with the applicant. *Letter of Counsel*, dated March 6, 2009. First, counsel claimed that the applicant's wife would suffer extreme hardship because her entire immediate family resides in the United States, her only relatives in Albania are the applicant's parents and siblings, and she would

not be able to afford airfare to visit her family in the United States. The applicant's wife affirms that she would "have to sever the daily family interaction [she has] had with [her] parents and siblings" that she has "valued [her] whole life." *Joint Sworn Statement of the Applicant and his Wife*, ¶ 9, dated March 5, 2009. While the record contains letters, cards and photographs showing that the applicant is close to her family in the United States, the relevant evidence does not demonstrate that the emotional difficulties the applicant's wife would face in Albania would extend beyond those normally encountered when families are separated due to removal or inadmissibility. *See Matter of Pilch,* 21 I&N Dec. at 631.

Second, counsel asserted that the applicant's wife would face economic difficulties in Albania because she would not be able to obtain employment or public benefits. Counsel cited reports of Albania's per capita income as among the lowest in Europe, an estimated 30 percent unemployment rate in 2008, and policies limiting government benefits to individuals who have contributed to the Albanian social security system for at least one year. However, the record does not demonstrate that the financial problems the applicant's wife would face in Albania would be extreme. A 2008 U.S. Department of State report (*Albania: Country Specific Information*) states that "economic conditions in the country are steadily improving." In addition, the applicant and his wife indicated that they would live and be supported by the applicant's parents in Albania. *Joint Sworn Statement* at ¶¶ 21, 25. The parents of the applicant's wife also affirmed that the applicant's family gave the couple "loving support" and "welcomed [the applicant's wife] into their family." *Letter of Parents of Applicant's Wife,* dated October 1, 2008.

Third, counsel claimed that the applicant's wife would endure personal hardships in Albania because she is a woman and does not speak Albanian. The evidence is equivocal regarding the applicant's wife's ability to speak Albanian and her familiarity with Albanian culture. While the applicant and his wife assert that she would have to learn a new language, one of the couple's friends states, "They are learning about each other's cultures and [the applicant's wife] has even learned some of his language." *Compare Joint Sworn Statement* at ¶ 22 with *Letter of* [redacted], dated October 7, 2008. Similarly, the record does not demonstrate that the applicant's wife personally would suffer extreme discrimination based on her gender. While societal discrimination against women is noted in the report cited by counsel, the same report specifies that such discrimination is most severe in communities of northeastern Albania, at the opposite end of the country from where the applicant's wife would reside with his family. *U.S. Dept. of State, 2008 Human Rights Report: Albania* at section five.

The record also does not show that the applicant's wife would be specifically at risk of trafficking or other gender-based crimes. According to documents submitted by counsel, isolated women under 18 years of age with little education and familial support are the most vulnerable to being trafficked. *Women and Children in Albania* (INSTAT 2006) at section 1.2.9; *Trafficking in Persons Report 2008 – Albania* (U.S. Dept. of State). In addition, while reports of domestic violence and sexual assault of women have increased, "it is unclear whether there is an actual increase in these criminal acts or if there is just an increase in reporting" due to increasing awareness of and legal penalties for these offenses. *Country Sheet Albania* (Country of Return Information Project 2008) at section 2.3; *2008 Human Rights Report: Albania* at section five.

Fourth, counsel claimed that the applicant would face threats to her personal safety in Albania. Again, the record does not support counsel's claims. Counsel asserted that the applicant would be a "target of opportunity" because criminals would assume that she is a rich American. Contrary to counsel's claims, the U.S. State Department reports that "[c]rime against foreigners is rare in Albania, as targeting foreigners is often viewed as too risky" and while "[s]treet crime is fairly common in Albania, . . . [c]riminals do not seem to deliberately target U.S. citizens."[1] *Albania Country Specific Information* (U.S. Dept. of State 2008). Counsel further claimed that the applicant's wife would be at risk of political violence because of the applicant's family's association with the Albanian Democratic Party, a risk asserted by the applicant in his asylum application. However, in affirming the denial of the applicant's asylum application, the BIA noted that "the political landscape has significantly changed in Albania since the applicant's departure . . . . Significantly, . . . the applicant's father, who serves as the Vice Chairman of the Democratic Party, continues to reside in Albania unharmed." *BIA Decision Dismissing Applicant's Appeal*, dated February 23, 2009, at 1-2. *See also 2008 Human Rights Report: Albania* at section three ("Political parties operated without restriction or outside interference."); *Country Sheet Albania* at section 2.2 ("Security risks in terms of political destabilization are low" and "political conflicts were carried out peacefully.").

Finally, counsel asserted that the applicant's wife would face a lower quality of life in Albania. The record indicates that, in general, Albanians have a lower per capita income, limited access to health care and that the country has a less developed infrastructure. However, the record does not demonstrate that all Albanians, specifically the applicant's family, face extreme hardship as a result of these challenges or that the applicant's wife has any medical conditions for which she would be unable to obtain treatment in Albania. A lower standard of living is an unfortunate, but frequent consequence of family relocation due to an alien's removal from, or inadmissibility to, the United States and does not amount to extreme hardship. *See Matter of Pilch*, 21 I&N Dec. at 631 (noting that "the inability to maintain one's present standard of living . . . [does] not constitute extreme hardship").

The applicant has also failed to demonstrate that his wife would face extreme hardship if she remained in the United States without him. The applicant's wife stated that if she remained in the United States and tried to "carry-on a long-distance marriage," she would experience financial hardship due to the high cost of airfare to Albania and would have to move in with her parents or find another roommate. *Joint Sworn Statement* at ¶ 35. The applicant's wife also indicated that she would suffer emotionally from the separation. *Id.* at ¶ 35-36. The couple's monthly budget states their combined monthly income as $1,960 and their monthly expenses as $1,130, yet the record indicates that the applicant's wife earns over twice as much as the applicant and that her income would still exceed her expenses even without the applicant's income. *Monthly Budget; 2008*

[1] The record indicates that there is a higher level of crime in Lazarat, an area close to the applicant's family's home in Gjirokaster, due to the illicit trade in cannabis. *Country Sheet Albania* at section 2.3.1. However, the extent to which that crime affects the applicant's family's hometown is unclear. Moreover, if the crime in Lazarat poses a danger to the applicant's wife, the record shows that she could avoid such harm by remaining in the United States. *See discussion, infra* pp. 5-6.

*Earnings Statements of the Applicant and his Wife*. While we do not discount the emotional pain of separation, the record contains no evidence that the difficulties the applicant's wife would face would be extreme. Moreover, the statements of the applicant, his wife and her relatives show that she receives substantial emotional support from her close family in the United States. *See Matter of Pilch*, 21 I&N Dec. at 633 (noting that the emotional hardship of separation may be tempered by family support in the United States).

While we acknowledge the difficulties facing the applicant and his wife, the record as a whole fails to demonstrate that she would suffer extreme hardship if he is refused admission to the United States. The Seventh Circuit Court of Appeals, within whose jurisdiction this case arose, has held that the common results of deportation do not constitute extreme hardship, which encompasses hardships substantially different from and more severe than those generally encountered when an individual is removed from the United States. *Palmer v. Immigration and Naturalization Serv.*, 4 F.3d 482, 487-88 (7th Cir. 1993). In this case, the record lacks sufficient evidence to show that the hardships faced by the applicant's wife, considered in the aggregate, extend beyond the common results of an alien's inadmissibility and rise to the level of extreme hardship. The applicant has consequently failed to establish extreme hardship to his U.S. citizen spouse, as required for a waiver of inadmissibility under section 212(i) of the Act.

When extreme hardship to a qualifying relative is established, U.S. Citizenship and Immigration Services (USCIS) will then assess whether a favorable exercise of discretion is warranted. *Id.*; *Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996). As the applicant here has not established extreme hardship to his qualifying relative, we do not reach the issue of whether he merits a waiver of inadmissibility as a matter of discretion.

The applicant bears the burden of proof in these proceedings to establish his eligibility for a waiver. *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.