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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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**U.S. Citizenship
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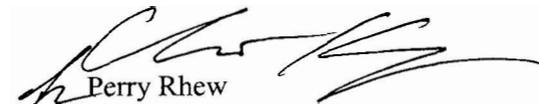
IN RE: Applicant:

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.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Columbus, Ohio and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 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 field office director 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 Field Office Director*, dated May 9, 2007.

On appeal, counsel for the applicant contends that the applicant's husband will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, submitted October 1, 2007.

The record contains a brief from counsel in support of the appeal; statements from the applicant, the applicant's husband, the applicant's son's teacher, the Chairman of a political party in Albania, friends of the applicant and her husband, the applicant's customers, the applicant's business partner, and the applicant's child; a copy of the applicant's husband's passport; a copy of the applicant's husband's prior Form I-94, Departure Record, reflecting that he was admitted as a refugee; a copy of the applicant's husband's naturalization certificate; a copy of the applicant's marriage certificate; documentation regarding a mortgage in the applicant's husband's name; copies of birth certificates for the applicant's children; a psychological evaluation for the applicant's husband; reports on conditions in Albania; copies of tax records; documentation regarding the applicant's child's attendance at a school, and; information regarding the applicant's entry to the United States using a passport that belonged to another individual. The entire record was reviewed and considered in rendering this decision.

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

The record reflects that the applicant entered the United States using a passport that belonged to another individual, thus she procured entry by fraud and misrepresentation. Accordingly, the applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant does not contest her 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; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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 (BIA) 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).

On appeal, counsel contends that the applicant's husband will suffer extreme hardship if the applicant is compelled to depart the United States. *Brief from Counsel*, submitted October 1, 2007. Counsel asserts that the field office director failed to consider many of the hardship factors articulated by the BIA and U.S. Courts of Appeals, and did not balance equitable factors in the present case. *Id.* at 1.

Counsel states that the applicant's husband is an Albanian refugee and he has a well-founded fear of persecution in Albania. *Id.* at 3. Counsel indicates that, although the applicant's husband has returned to Albania twice since 1993, he did so in a clandestine manner due to his fear that he would be recognized and targeted for harm. *Id.* at 3-4. Counsel provides that the applicant's husband would be too fearful to visit the applicant in Albania more than once every five years should she relocate there. *Id.* at 4. Counsel notes that the United States admitted the applicant's husband as a refugee, and that those who persecuted him are still in power. *Id.* at 5.

Counsel asserts that the applicant's husband no longer has ties to Albania. *Id.* In contrast, counsel contends that the applicant's husband has strong ties to the United States. *Id.* at 6. Counsel states that the applicant's husband owns 28 residential rental units in the Columbus, Ohio area with a combined mortgage debt of over \$700,000. *Id.* Counsel contends that the applicant's husband would incur substantial financial loss should he relocate to Albania as a result. *Id.*

Counsel states that the applicant's husband is clinically depressed, and that his counselor has predicted that his depression will spiral downward if the applicant departs the United States. *Id.* at 8. Counsel discusses a psychological evaluation of the applicant's husband performed by a licensed professional clinical counselor. *Id.* at 9. Counsel asserts that the evaluation supports that the applicant's husband would suffer unusual emotional consequences if the applicant departs, in part due to his current depression and his lack of ability to parent his two children alone. *Id.* at 10.

Counsel contends that the applicant's two U.S. citizen children would suffer extreme hardship if the applicant departs the United States, whether they relocate with her or remain. *Id.* at 7. Counsel contends that the applicant's children would be unable to attend school in Albania due to language and citizenship issues. *Id.* Counsel asserts that the children would endure hardship if they lose the applicant as their primary care giver, as the applicant's husband's depression would worsen and his parenting ability would be hindered. *Id.* Counsel provides that the applicant's children would suffer emotional hardship if they are separated from the applicant. *Id.* at 7-8.

The applicant's husband expresses fear of returning to Albania due to his prior opposition to the Communist Party, and the fact that the same individuals remain in power. *Statement from the Applicant's Husband*, dated September 2006. He provides that he would be too afraid to go to Albania to visit the applicant more than once every five years should she return there. *Id.* at 2. He states that if his children relocate to Albania with the applicant, he will be sick and worried, and that life would be very hard for him. *Id.* He expresses concern that someone may harm the applicant or his children in retaliation for his prior political opposition. *Id.* at 2-3. The applicant's husband stated that he would have to let the applicant take their children with her should she relocate to Albania, as he cannot care for them alone. *Id.* at 3. He explains that he works 14 to 16 hours per day including weekends, and that he travels often for work, thus he is unable to care for his children. *Id.* He provides that he must work to maintain his debt on 28 rental units. *Id.*

The applicant's husband stated that he and the applicant have been together since 1996 and they were married on April 11, 2002. *Prior Statement from the Applicant's Husband*, dated February 23, 2006. He expressed that he and the applicant share a close relationship. *Id.* at 1. He explained that when he and the applicant are done with their jobs in the evening, they are at home caring for their children and spending time together. *Id.* He indicated that he would have to severely cut back on his work hours in order to attempt to care for his two children alone, and that his career would suffer. *Id.* at 2.

The applicant provided a letter from her son's teacher who attested that her son has exhibited negative behavioral changes due to the prospect of the applicant departing the United States. *Letter from Applicant's Son's Teacher*, dated February 26, 2007.

The applicant states that she fled Albania in 1996 because her brother had been shot and killed and she feared for her life. *Statement from the Applicant*, dated September 7, 2006. The applicant notes that there is no one in the United States with whom her children can reside, contrary to the field office director's decision. *Id.* at 1. The applicant explains that she cannot reside in London with her brothers as they are back in Albania. *Id.* at 2. She provides that she cannot reside with her sister in Italy because she would not be able to get a visa to live there legally. *Id.* She states that her husband is a political refugee and that he cannot reside in Albania. *Id.*

The applicant submitted a letter from the Chairman of the Party of National Van (Balli) in Albania that reflects that the applicant's husband's family has a long tradition of opposition within the Communist region, and that his family has suffered significant persecution. *Letter from* [REDACTED] dated January 22, 2007.

The applicant provided a psychological evaluation for her husband that reflects that he was evaluated on February 20, 2006 and he returned for counseling on June 19, 2006. *Report from* [REDACTED] dated September 27, 2006. The report finds that the applicant's husband lacks the skill and temperament to care for his children alone, and that doing so would aggravate his depression and deteriorate his ability to act as a parent. *Id.* at 2. In a prior report, the applicant's husband was diagnosed with Major Depression, Single Episode, Moderate, and Generalized Anxiety Disorder, with numerous accompanying symptoms including a depressed mood for most of the day, significant weight loss, insomnia, fatigue, diminished ability to concentrate, and recurrent thoughts of death and suicidal ideation. *Prior Report from* [REDACTED] dated February 20, 2006.

Upon review, the applicant has shown that her husband will experience extreme hardship if she is prohibited from residing in the United States. Section 212(i)(1) of the Act. The applicant has shown that her husband will experience extreme hardship should he relocate to Albania with her. The record shows that the applicant's husband fled Albania in 1993 due to political persecution, and he was admitted to the United States as a refugee. He noted that he has returned to Albania twice, yet he did so to visit his parents and he took substantial measures to guard his safety. It is evident that the applicant's husband would endure significant emotional hardship should he return to a country where he faced persecution, and where he believes he will continue to be targeted for harm. The applicant's husband has substantial economic ties to the United States, including employment and business interests, and separation from such interests would likely involve financial loss and emotional hardship. The applicant's husband has two U.S. citizen children, and it is understood that he would have substantial concern for their well-being in Albania which would cause psychological difficulty for him. Based on the foregoing, the record shows by a preponderance of the evidence that the applicant's husband would face extreme hardship should he relocate to Albania to maintain family unity. Section 212(i)(1) of the Act.

The applicant has also shown that her husband will experience extreme hardship should he remain in the United States and the applicant depart. The applicant's husband has reasonable cause to fear for his family's safety and quality of life in Albania. As discussed above, the applicant's husband suffered persecution in Albania. The applicant indicated that she fled Albania because her brother was shot and killed there. These events occurred approximately 15 year ago, and reports reflect that security and political conditions have improved. *U.S. Department of States 2008 Human Rights Report: Albania*, dated February 25, 2009. The applicant's husband expressed concern for his

children's experience in Albania as U.S. citizens. The U.S. Department of State indicated that "crime against foreigners is rare in Albania, as targeting foreigners is often viewed as too risky Criminals do not seem to deliberately target U.S. citizens or other foreigners." *U.S. Department of State, Albania, Country Specific Information*, dated July 14, 2009. Yet, individuals residing in Albania face safety and health risks. The U.S. Department of State reported "medical facilities and capabilities in Albania are limited beyond rudimentary first aid treatment. Emergency and major medical care requiring surgery and hospital care is inadequate due to lack of specialists, diagnostic aids, medical supplies, and prescription drugs Major roads in Albania are often in very poor condition. Traveling by road throughout Albania is the most dangerous activity for locals and tourists." *U.S. Department of State, Albania, Country Specific Information*. Economic conditions in Albania can be harsh, with an estimated unemployment rate above 30% due to a predominance of near-subsistence farming. *U.S. Central Intelligence Agency World Factbook, Albania*, dated October 28, 2009. The AAO acknowledges that the applicant's and her husband's prior challenges in Albania create substantial apprehension regarding their family members residing there. Thus, the record supports that the applicant's husband would experience significant emotional hardship should the applicant and their children reside in Albania.

As the applicant's husband has fear of returning to Albania, it is evident that he would endure lengthy family separation from the applicant and his children should they relocate there. As noted above, reports reflect that there has been improvement in conditions in Albania since the applicant's husband fled. However, as a refugee and victim of past political persecution, the AAO acknowledges that the applicant's husband has a reasonable subjective fear of visiting there based on his past experience.

The AAO has examined the reports from [REDACTED] regarding the applicant's husband's mental health. While the reports do not reflect that the applicant's husband is engaging in a continuing course of treatment, they support that he is experiencing emotional and physical hardship due to the uncertainty of the applicant's status in the United States and the possibility of her and his children relocating to Albania. The reports support that the applicant's husband would have difficulty caring for his two children without the applicant's assistance, and that he would endure significant emotional hardship should the applicant and his children relocate to Albania.

Based on the foregoing, the applicant has shown by a preponderance of the evidence that her husband will experience extreme hardship should he remain in the United States and she depart. Thus, the applicant has established that denial of the present waiver application "would result in extreme hardship" to her husband. Section 212(i)(1) of the Act. This finding is largely based on the fact that the applicant's husband previously fled Albania due to persecution, which distinguishes his hardship from that which is commonly experienced when family members relocate or are separated due to inadmissibility.

In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General (now Secretary of the Department of Homeland Security) has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant entered the United States by fraud and misrepresentation, and she remained for a lengthy period without a legal immigration status.

The positive factors in this case include:

The record does not reflect that the applicant has engaged in criminal activity; the applicant's U.S. citizen husband would experience extreme hardship if she is prohibited from residing in the United States; the applicant's U.S. citizen children would experience significant hardship if they remain in the United States without the applicant or relocate to Albania, and; the applicant has cared for her U.S. citizen children and cultivated a strong family unit.

While the applicant's violation of U.S. immigration law cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361; *see also Matter of Mendez-Morales*, 21 I&N at 301 (finding that, in addition to establishing extreme hardship, an applicant must show that he or she merits a favorable exercise of discretion). In this case, the applicant has met her burden that she merits approval of her application.

ORDER: The appeal is sustained.