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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H5

[redacted]

Date: SEP 0 2 2011 Office: VIENNA, AUSTRIA FILE: [redacted]

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Vienna, Austria, 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 attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant is the son of United States citizens and the father of two Albanian citizen children. He is the beneficiary of two approved Petitions 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 parents and brother.

The OIC found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relatives and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated February 2, 2009.

On appeal, the applicant, through counsel, contends that the OIC's "decision is in error and should be reversed." *Counsel's appeal brief*, dated March 24, 2009.

The record includes, but is not limited to, counsel's appeal brief, a declaration from the applicant, letters of support for the applicant, a psychological evaluation and documents for the applicant and his parents, naturalization certificates for the applicant's parents and brother, the applicant's marriage certificate, birth certificates for the applicant's children, and articles on country conditions in Greece. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) 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 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 [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...

In the present case, the record indicates that on April 6, 2000, the applicant applied for a nonimmigrant visa. In support of his application, the applicant presented an Albanian passport which misrepresented his name and date of birth.

Counsel states that "[t]he core question is whether or not [the applicant] obtained and submitted his own altered passport in order to obtain an immigration benefit. He did not. He obtained this passport four years prior to making the April 6, 2000 visa application for the purpose of avoiding discrimination and persecution in Greece because of his Albanian nationality and Albanian first name." In a declaration dated March 19, 2009, the applicant states he "applied on April 2000 for a visa to the American Embassy in Athens with the [altered] passport in the name [redacted] and the visa was refused." Counsel claims that even though the applicant presented the altered passport in support of his visa application, "he presented the passport...for ALL purposes in Greece." Therefore, counsel claims that the passport was not procured solely "in order to obtain a visa to the United States."

The AAO finds counsel's contention that the applicant is not inadmissible to the United States through the misrepresentation of a material fact to be unpersuasive. The AAO observes that in waiver proceedings the burden of proof is on the applicant to establish admissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO notes that the record establishes that on April 6, 2000, the applicant applied for a nonimmigrant visa, and in support of his visa application, he submitted an altered Albanian passport. Additionally, the AAO notes that the applicant admitted to presenting the altered Albanian passport in support of his visa application. There is no evidence in the record to support counsel's contention that the applicant obtained the false passport four years before his visa interview nor is there any evidence that the applicant used the false passport for any purpose other than applying for a visa. Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting a material fact in order to seek admission into the United States.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parents are the only qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Service (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[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. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant has not asserted that his parents will endure hardship should they relocate to Albania. In the absence of clear assertions from the applicant, the AAO may not speculate regarding challenges his parents will face outside the United States. The applicant bears the burden to show extreme hardship to his qualifying relatives in these proceedings. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO notes that evidence in the record indicates that the applicant's father suffers from high blood pressure and high cholesterol, and he takes medications to control his medical conditions. The AAO notes that no medical documentation has been submitted establishing the severity of the applicant's father's medical issues or how often he receives treatment and/or monitoring for his medical conditions. Going on record without supporting evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Additionally, the AAO notes that there is no documentation in the record establishing that the applicant's father cannot receive treatment for his medical conditions in Albania or that he has to remain in the United States to continue his treatments. In that the record does not include sufficient documentation of financial, medical, emotional or other types of hardship that the applicant's parents would experience if they joined the applicant in Albania, the AAO does not find the applicant to have established that his parents would suffer extreme hardship upon relocation.

In addition, the record also fails to establish extreme hardship to the applicant's parents if they remain in the United States. In a psychological evaluation dated March 19, 2009, psychologist [redacted] states the applicant is suffering by being separated from his wife and children, who reside in Greece. [redacted] reports that the applicant's symptoms include "unstable relations," economic problems, anxiety, "sleeplessness, incapability to relax," "irritation," "muscle straining," difficulty in concentrating, and "[g]uilty and powerlessness feelings." Additionally, [redacted] reports that the separation is "very stressful for [the applicant's] children...because it has caused disorder of the family structure." Further, [redacted] reports that the applicant's wife is worried about her children. [redacted] also indicates that the applicant cannot financially provide for his family in Greece. Counsel states the applicant "has struggled to survive and support his family for many years in conditions of deep political and economic instability in Albania." The AAO acknowledges that the applicant, his wife, and his children are suffering some hardship in being separated from each other; however, the AAO notes that the applicant, his wife, and his children are not qualifying relatives, and the applicant has not shown that hardship to himself and/or his wife and children will elevate his parent's challenges to an extreme level.

Counsel states the applicant "has been separated from his parents for many years and they are longing to help [the applicant] and his family to begin a new life in the United States." In a psychological evaluation dated March 2, 2009, [redacted] diagnosed the applicant's parents with major depressive disorder. [redacted] indicates that "[n]either antidepressant medication nor supportive psychotherapy will be able to totally alleviate their symptomatology." In letters dated March 12, 2009, [redacted] diagnosed the applicant's parents with major depressive episode. [redacted] indicates that their depression and anxiety is caused by the separation from the applicant. He also indicates that "[a] continued separation from [the applicant]" will make the applicant's parents depression worse. [redacted] reports that the applicant's parent's "depression is so severe that it is adversely affecting every aspect of [their] life" and they are having problems concentrating. [redacted] states the applicant's

mother's symptoms include "tearfulness, insomnia, feelings of worthlessness, disruption of her cognitive powers of concentration and attention, and feelings of helplessness and hopelessness." Additionally, [redacted] states that the applicant's father's symptoms include "tearfulness, insomnia, disruption of appetite with weight loss of 15 pounds, feelings of worthlessness, disruption of his cognitive powers of concentration and attention, and feelings of helplessness and hopelessness." He also indicates that the applicant's father has "recurring suicidal ideation." [redacted] reports that in January 2009, the applicant's father thought about drowning himself in the ocean. However, [redacted] states that the applicant's father "denies current suicidal ideation." The AAO notes the mental health concerns of the applicant's parents.

The AAO has carefully considered the psychological evaluation and letters regarding the emotional difficulties experienced by the applicant's parents. While it is understood that the separation of relatives often results in significant psychological challenges, the applicant has not distinguished his parent's emotional hardships upon separation from that which is typically faced by the relatives of those deemed inadmissible. The AAO notes that no corroborating evidence has been submitted to corroborate the statements made in the psychological evaluations, such as difficulty at work. The AAO also notes that the record does not establish through documentary evidence that the applicant's father requires the assistance of the applicant because of his medical conditions. Additionally, the AAO notes that other than statements made in the psychological evaluations, no medical documentation has been submitted establishing that the applicant's father suffers from any medical conditions or the severity of his medical conditions. Based on the record before it, the AAO finds that the applicant has failed to establish that his parents would suffer extreme hardship if his waiver application is denied and they remain in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's parents 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.