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

PUBLIC COPY

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[redacted]

Date: JUN 0 8 2012

Office: CHICAGO, ILLINOIS

[redacted]

IN RE: [redacted]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under Sections 212(i) and 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and 8 U.S.C. § 1182(h)

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Field Office Director, Chicago, Illinois, 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 procuring admission to the United States through fraud or the willful misrepresentation of a material fact, and section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The record indicates that the applicant is the son of a U.S. citizen and lawful permanent resident of the United States and the father of two U.S. citizen children. He is the beneficiary of an approved Petition 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); and section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his parents and children.

The Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 18, 2009.

On appeal, the applicant, through counsel, claims that the Field Office Director "failed to consider or give proper weight to all relevant factors pertaining to hardship and mischaracterized events at the applicant's [a]djustment of [s]tatus interview." *Form I-290B*, filed December 16, 2009. Additionally, he states that "new factors have arisen since the filing of the application." *Id.* Counsel also submits new hardship evidence on appeal.

The record includes, but is not limited to, counsel's appeal brief and brief in support of the I-601, statements from the applicant and his parents, letters of support, a medical document for the applicant's mother, financial and employment documents, photos, country-conditions documents for Albania, and documents pertaining to the applicant's convictions. 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) 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.
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> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

> (1) The [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.

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.

In the present case, the record indicates that on or about September 15, 1996, the applicant entered the United States by presenting a passport in someone else's name. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding.

Additionally, the record shows that on March 16, 2007, the applicant was convicted of resisting and obstructing a peace officer, and sentenced to 24 months of probation. The applicant was found inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act by the Field Office Director. The applicant has not disputed this finding on appeal. Because the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, and demonstrating eligibility for a waiver under section 212(i) of the Act also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not review the determination of the applicant's inadmissibility under section 212(a)(2)(A)(i)(I).

A waiver of inadmissibility under section 212(i) of the Act is dependent first on a showing that the bar to admission imposes extreme hardship on a qualifying relative. 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 Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The record contains references to hardship the applicant's child would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's parents are the only qualifying relatives for the waiver under section 212(i) of the Act. Hardship to the applicant's children will not be separately considered, except as it may affect the applicant's parents.

Counsel claims that because the applicant's grandfather was a leader of the opposition party in Albania after World War II, the applicant's family was harassed and persecuted. Specifically, counsel asserts that the applicant's father and uncle were "jailed while their family members were prevented from having any contact with them." The record establishes that the applicant's father and siblings obtained political asylum in the United States. Counsel claims that political persecution still exists in Albania. In a statement dated March 8, 2010, the applicant's father claims that the applicant and his grandchildren may be harmed in Albania, because of their political beliefs, and that he has never returned because of his history and the political strife. Counsel submits country-conditions documents in support of his claims.

Counsel asserts that the applicant's parents will suffer extreme financial hardship if his waiver is not approved. Counsel states that though the applicant only has a high school education, he is able to earn more in the United States than in Albania. Counsel claims that the applicant's children would not have the same educational opportunities that they have in the United States and the quality of health care in Albania is inferior to the United States. Additionally, counsel claims that the applicant's children have health insurance in the United States, which the applicant could not afford in Albania.

Counsel states the applicant's parents have no family in Albania. In his brief in support of the Form I-601, counsel claims that many of the applicant's family members have status in the United States. At various times the applicant's siblings have helped support their parents, as demonstrated by the U.S. income tax forms in the record. Additionally, in a statement dated March 8, 2010, the applicant's mother states she suffers from a thyroid problem and high blood pressure, for which she is being treated by a doctor. In a statement dated August 8, 1995, [redacted] stated that the applicant's mother had surgery for thyroid cancer in April 1995, and she was being treated by medication.

Based on the record as a whole, including the applicant's father's entry to the United States as a refugee, his parents' separation from their family, his mother's medical condition, and country conditions in Albania, the AAO finds that the applicant's parents would suffer extreme hardship if they were to relocate to Albania to be with the applicant.

However, the record fails to establish extreme hardship to the applicant's parents if they remain in the United States. The applicant's father states he and his wife will suffer emotionally if the applicant returns to Albania, since, as their oldest son and consistent with their culture, he "holds a special place...with a special responsibility to take care of his parents when they grow old." Counsel states that the applicant's parents would suffer extreme emotional hardship by not seeing the applicant or their grandchildren every day. Additionally, the applicant's father states he would worry about the applicant and his grandchildren in Albania because of the political situation and he fears he would never see the applicant again. The applicant's mother states being separated from the applicant for years "extremely difficult" for her and she does not want to "be separated from him again."

Counsel states that the applicant's parents have relied on the applicant for the last 13 years, and his father, who is 73 years old, depends on the applicant "to help him financially, emotionally, [and] physically." The applicant's father states he is retired, he and his wife share a residence with the

applicant and his children, and without the applicant's support, he could not afford or maintain his home. Additionally, the applicant's father states the applicant also helps around the house, takes him and his wife to the doctors, and helps them run errands. Further, they could not afford to travel to Albania to visit the applicant. Counsel states that without the applicant's financial support, the applicant's father could not support himself or his wife, and their other children are not "in a financial position to support them."

Counsel states that the applicant's children will also suffer financial hardship since the applicant has custody of them, their mother does not have work authorization, and she is only able to contribute "a limited financial amount to [their] children's well-being." The applicant's father states he cannot afford to take care of the applicant's children; and in a statement dated March 8, 2010, the applicant states that his siblings could not afford to care for his children, either. A 2009 Form 1040, U.S. Individual Income Tax Return, shows that the applicant claimed his two children as dependents. However, there is no documentary evidence in the record establishing that the applicant has full custody of his children or that their mother does not help in raising them.

The AAO acknowledges that the applicant's parents may suffer some emotional problems in being separated from the applicant. While it is understood that the separation of loved ones often results in significant psychological challenges, the applicant has not distinguished his parent's emotional hardship upon separation from that which is typically faced by the loved ones of those deemed inadmissible. Additionally, though the applicant's parents refer to financial difficulties, other than tax returns for the applicant and his parents, the record does not contain any material establishing that the applicant's parents are unable to support themselves in the applicant's absence. Further, the record establishes that the applicant's siblings have helped support their parents in the past. The applicant has not distinguished his parent's financial challenges from those commonly experienced when a family member remains in the United States. Additionally, the record does not establish that the applicant is unable to obtain employment in Albania and, thereby, financially assist his parents from outside the United States. 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.

Although the applicant has demonstrated that his parents would experience extreme hardship if they relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(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.