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

(b)(6)

U.S. Citizenship and Immigration Services

Date: DEC 12 2014 Office: CHARLOTTE FIELD OFFICE FILE:

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:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Charlotte, North Carolina, denied the waiver application and 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 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 procuring admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with his U.S. citizen spouse.

The field office director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director* dated April 23, 2014.

On appeal counsel for the applicant contends that the field office director erred by not considering all the evidence of hardship in the aggregate. With the appeal counsel submits a brief and a psychological evaluation of the applicant's spouse and the spouse's son. The record contains statements from the applicant, his spouse, and his spouse's son and daughter; letters of support from friends; financial documentation; school documentation for the spouse's son; general education information for the United States and Albania; country information for Albania; and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (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:

> 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 on April 7, 2005, under the visa waiver program by using a fraudulent Italian passport issued in the name of another person. Based

on this information the field office director determined the applicant was inadmissible for fraud or misrepresentation. The applicant has not contested the finding of inadmissibility.

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. The applicant's spouse is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and 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 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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

Counsel asserts that the spouse has found refuge in her relationship with the applicant but is now experiencing stress and fears a recurrence of her son's mental health issues if his father figure is gone. Counsel asserts that the spouse's daughter is also close to the applicant who is involved in the lives of his spouse's children. The applicant's spouse states that she and the applicant came from troubled relationships, that he provides a stable and loving environment, and that he has a deep bond with her children as the only father figure they have had. The spouse's daughter states that the applicant makes the family complete.

A psychological evaluation of the applicant's spouse notes that her father died when she was 18 years old and that she got married and had her first child at about the same time. It states that the spouse's first husband died and that although she remarried, the relationship was tumultuous and ended in divorce. The evaluation states that she describes her marriage to the applicant as wonderful and states that she relies on the applicant for emotional support. The evaluation states that the spouse reports that since the applicant's waiver application was denied, she is not sleeping well and cries easily and she is having trouble concentrating at work and is losing interest in social activities. The evaluation states that tests indicate she has low morale, symptoms of depression, difficulty sleeping, disturbed eating patterns, and a lack of energy. It states that the spouse feels life is no longer worthwhile and that she is losing control of her thought process.

Although the evidence indicates that the applicant's spouse would experience hardship due to separation from the applicant, the spouse's statement and the evaluation provided do not establish that the hardships the applicant's spouse would experience are beyond the hardships normally associated when a spouse is found to be inadmissible.

Counsel for the applicant asserts that the applicant's spouse depends on the applicant to care for her son so she can continue earning an income and the spouse states that without the applicant she cannot meet her financial obligations. There is documentation on the record of income and some expenses from 2012, but no evidence of current expenses for the spouse, such as rent or utilities, or of her overall financial situation has been submitted to establish that without the applicant's presence in the United States, she would experience financial hardship.

As indicated above, an applicant's child is not a qualifying relative under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver and hardship to the spouse's son, the applicant's stepchild, will not be separately considered except as it may affect the applicant's spouse.

The spouse states that she fears her son losing his father figure and the son states that the applicant helps him with homework, takes him to his doctor, works on cars with him, and takes the family to dinner and on vacation. A psychological evaluation of the spouse's son states that he had been referred for psychotherapy in 2011, but no documentation has been submitted to the record providing any further information. The evaluation states that the applicant's spouse reported her son's father died in a motorcycle accident before the son was born and that her second husband was a role model, but since they divorced they have they not seen each other for several years. The evaluation states that the applicant's spouse reports the applicant being an active father figure and that the son reports feeling trapped between wanting to be with his mother and stepfather and not wanting to leave the United States. The evaluation finds that the son is in a stable emotional state, but since he has already experienced the loss of a paternal figure, another loss could cause feelings of abandonment to resurface. Although we acknowledge some hardship to the applicant's stepson, the record does not show that hardship to the applicant's stepson would create hardship rising to the level of extreme for the applicant's spouse.

We find that the record fails to establish that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant. We recognize that the applicant's spouse will endure some hardship as a result of long-term separation from the applicant. However, we note that the applicant's spouse states that her extended family, including her mother, grandmother, and daughter, is in the United States and that she has lived her entire life within minutes of her mother. The record reflects that the applicant's spouse has family to whom she is emotionally and geographically close and can help provide support for her and her son. The record does not establish that hardship to the applicant's spouse would rise to the level of extreme.

We find, however, that the record establishes that the spouse would experience hardship if she were to relocate to Albania to reside with the applicant. Counsel states that the applicant's spouse has no experience living outside the United States, that language and cultural barriers are insurmountable for her and her son, and that the costs of travel would impede her from visiting family in United States, where she provides support and assistance for her mother and grandmother, both widowed and living alone. Counsel asserts that the applicant's spouse would be unable to find comparable employment without Albanian language skills and would thus be unable to meet financial

obligations and to support her brother, who experiences mental health problems and has required hospitalization.

The applicant's spouse states that relocating to Albania would isolate her from long-established personal relationships, and she would have no language skills or ability to make friends there. She states that her extended family is in the United States and that it would be an emotional hardship not to see her daughter, who still needs her. The spouse states that her brother has severe mental health issues and that since they have a close relationship she cannot allow him to feel abandoned. The applicant states that his spouse is close to her mother, grandmother, and a brother with severe emotional problems, and further states that his spouse loves her job, but would be unable to get a job in Albania due to the language barrier.

The psychological evaluation of the applicant's spouse states that she is concerned about her ability to integrate into the culture and find employment. The evaluation states that the spouse is likely to have difficulty adapting to a foreign environment as she tends to be passive, submissive, and lacking self-confidence. The evaluation also states that the spouse's younger brother is under treatment for an unknown mental illness. Although counsel, the applicant, and the applicant's spouse all mention the spouse's brother, no supporting documentation has been submitted to provide detail of the brother's situation or what assistance the applicant's spouse provides.

Counsel further asserts that the spouse's adolescent son has an established life in the United States and that the spouse fears upheaval will cause a need to resume mental health treatment that she sought for him in the past. Counsel cites documentation showing the expense of English-speaking schools in Albania and asserts that the spouse's son would be unable to find comparable educational facilities there, which would cause extreme hardship to the spouse knowing her child was not benefitting from an education. Counsel asserts that the son already has problems in a few classes so uprooting him would exacerbate those problems.

The applicant's spouse states that it would be a financial hardship to visit the United States from Albania, and her son would be devastated not seeing the rest of the family. The spouse states that her son has sought mental health help due to depression so being away from family and friends would cause more depression. The applicant states that his stepson has seen a doctor in the past for emotional problems but in Albania would be unable to get adequate care. The psychological evaluation states that the applicant's spouse is worried that her son's social development will be impaired and he will have difficulty making friends due to the language. The psychological evaluation of the spouse's son states that given his general lack of motivation he is unlikely to assimilate to a new culture in another country.

Counsel cites country information showing Albania has a high crime rate and a lack of labor laws protecting workers. We note that according to the U.S. Department of State Albania's per capita income is among the lowest in Europe, and high unemployment and other economic factors encourage criminal activity. It states that English is limited except for main tourist areas. It also states that medical care at private hospitals and clinics in remains below western standards and medical facilities outside have limited capabilities, with hospital care often

inadequate because of a lack of medical specialists, diagnostic aids, medical supplies, and prescription drugs. *See* U.S. Department of State, Bureau of Consular Affairs, April 3, 2014.

The record shows that the applicant's spouse has always lived in the United States, so relocating would cause her to leave her family, including her mother, brother, and daughter, and be confronted with language and cultural barriers while being concerned about her financial stability in light of the poor economy in Albania and about the health and educational welfare of her son if he were to reside with her. These factors in the aggregate establish that the applicant's spouse would experience extreme hardship if she were to relocate to Albania 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 relative in this case.

We therefore find that the applicant has failed to establish extreme hardship to his spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.