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

[redacted]

Date: SEP 0 5 2014 Office: HARTFORD, CT FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: 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 1182(h)

ON BEHALF OF APPLICANT:

[redacted]

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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

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 misrepresentation. The applicant is also inadmissible under 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. As such, the applicant requires a waiver of inadmissibility pursuant to sections 212(i) and 212(h) of the Act, 8 U.S.C. § 1182(i) and 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen spouse and U.S. citizen child.

The Field Office Director found that the applicant did not establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility and did not demonstrate that he merited a favorable exercise of discretion. She denied the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Decision of the Field Office Director,* dated January 29, 2014.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) abused its discretion and made errors of law and fact in its denial of the applicant's Form I-601. Counsel also asserts that the qualifying spouse would face extreme hardship if the applicant's waiver is not granted and disagrees with the Field Office Director's findings concerning the applicant's negative discretionary factors.

In support of the waiver application, the record includes, but is not limited to: a Form I-290B, Notice of Appeal or Motion; briefs written on behalf of the applicant; letters from the applicant, qualifying spouse, their friends, their current and former employers, their reverend, and their family; a birth certificate for their child; mental-health documentation regarding the qualifying spouse, her father and her mother; documentation regarding the applicant's criminal history; financial documentation; photographs; country-conditions materials about Albania; a report about raising children with absentee fathers; a certificate of completion for a course related to the applicant's criminal conviction; a Form I-485, Application to Register Permanent Residence or Adjust Status; and an approved Form I-130, Petition for Alien Relative, with supporting documents. 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:

> 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 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 [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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

The record reflects that the applicant was admitted into the United States under the visa-waiver program using a fraudulent Italian passport in the name of on February 12, 2005. He is therefore inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding of inadmissibility on appeal.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

> (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
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> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime or
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> (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

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

> The [Secretary] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if-
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> (1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that –

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .; and

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The record indicates that on May 5, 2008, the applicant was convicted of third degree forgery and "under $500 on revoked credit card" pursuant to Sections 53a-140 and 53a-128d of the Connecticut General Statutes (CGS) in the Superior Court of the State of Connecticut. He was sentenced to one year of probation and a suspended one year of incarceration.

At the time of the applicant's conviction, Section 53a-140 of the CGS, Forgery in the third degree: provided:

(a) A person is guilty of forgery in the third degree when, with intent to defraud, deceive or injure another, he falsely makes, completes or alters a written instrument, or issues or possesses any written instrument which he knows to be forged.

At the time of the applicant's conviction, Section 53a-128d of the CGS, Illegal use of credit card, provided:

Any person who, with intent to defraud the issuer, a participating party, or a person providing money, goods, services or anything else of value, or any other person, (1) uses for the purpose of obtaining money, goods, services or anything else of value a credit card obtained or retained in violation of section 53a-128b or a credit card which he knows is forged, expired or revoked, or (2) obtains money, goods, services or anything else of value by representing without the consent of the cardholder that he is the holder of a specified card or by representing that he is the holder of a card and such card has not in fact been issued, or (3) uses a credit card obtained or retained in violation of section 53a-128c or a credit card which he knows is forged, expired or revoked, as authority or identification to cash or to attempt to cash or otherwise to negotiate or transfer or to

> attempt to negotiate or transfer any check or other order for the payment of money, whether or not negotiable, if such negotiation or transfer or attempt to negotiate or transfer would constitute a violation of section 53a-128 violates this subsection and is subject to the penalties set forth in subsection (a) of section 53a-128i, if the value of all money, goods, services and other things of value obtained in violation of this subsection does not exceed five hundred dollars in any six-month period.

Sections 53a-140 and 53a-128d of the CGS are violated when the offender has the "intent to defraud" either; (1) by deceiving, injuring or falsely making a written instrument, or issuing or possessing a fictitious writing or (2) by using a credit card known to be fictitious or by falsely representing to have consent of the owner. It has generally been held that forgery, in all its degrees, involves an intent to defraud, and is thus a crime of moral turpitude. See *United States ex rel. McKenzie v. Savoretti*, 200 F.2d 546 (5th Cir. 1952); *Matter of Seda*, 17 I&N Dec. 550, 552 (BIA 1980) (finding that a conviction for forgery in violation of the Code of Georgia including "intent to defraud" as an element of the offense is a crime involving moral turpitude). The United States Supreme Court in *Jordan v. De George* concluded that "[w]hatever else the phrase 'crime involving moral turpitude' may mean in peripheral cases, the decided cases make it plain that crimes in which fraud was an ingredient have always been regarded as involving moral turpitude. . . . Fraud is the touchstone by which this case should be judged. The phrase 'crime involving moral turpitude' has without exception been construed to embrace fraudulent conduct." 341 U.S. 223, 232 (1951). Therefore, the applicant's offenses are categorically crimes involving moral turpitude, and he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Counsel also concedes the applicant's inadmissibility resulting from these convictions on appeal.

As the applicant's waiver application under section 212(i) of the Act is the most restrictive of the waivers for which he is applying, his appeal will be adjudicated in accordance with this section. Establishing extreme hardship under section 212(i) of the Act will also satisfy the requirements for a waiver of inadmissibility under section 212(h) of the Act. A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent. Hardship to the applicant is not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. 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).

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 children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

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. *See Salcido-Salcido*, 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 qualifying spouse is suffering from mental-health issues that will worsen if the applicant returns to Albania. To support these assertions, the record contains letters from the qualifying spouse and her family members, as well as documentation prepared by a psychologist and two licensed clinical social workers who are familiar with the applicant's spouse. The psychologist, in her assessment dated October 12, 2012, diagnoses the applicant's spouse with generalized anxiety disorder and major depressive disorder. She also concludes that she is at risk for suicide, given her history of mental-health difficulties stemming from her childhood and "her degree of distress, fear, anxiety, and hopelessness," particularly after losing the support of her therapist. Letters from the qualifying spouse and her mother, as well as a medical certificate from her father's psychiatrist, confirm that the qualifying spouse experienced significant physical and emotional abuse by her father related to his alcoholism and ongoing mental-health issues. The record reflects that the applicant's spouse has sought therapy, even before meeting the applicant, as a result of these mental-health issues. The psychologist also indicates that the qualifying spouse's emotional issues and stress have affected her functioning at work, and according to the qualifying spouse, she had to take off some time from work due to heart palpitations and tearfulness. A co-worker confirms in a letter that the applicant's spouse has been experiencing "great emotional and mental distress [and] is in a constant state of anxiety." The qualifying spouse indicates in her letter dated January 4, 2013, that the applicant makes her feel "protected," he contributes towards their expenses, and he has learned from his mistakes. She also states that she feels an "intense fear of losing him" that affects her ability to concentrate, disrupts her sleep, and causes her to cry "for hours." She does not believe she would be able to raise their son alone without the applicant's financial assistance, and she does not think she could afford to visit him in Albania. Corroborative evidence in record confirms that the applicant is working and that, although the applicant's spouse earns more than the applicant, they combine their income. The emotional, physical and financial issues that the qualifying spouse would experience due to her separation from the applicant, considered in their cumulative effect, constitute hardship beyond the common results of removal. When evidence of this hardship is considered in the aggregate, the record establishes the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Concerning the hardship the applicant's spouse would experience if she were to relocate to Albania, counsel asserts that the qualifying spouse, a native and citizen of the United States, has close family ties in the United States, specifically to her mother and sisters. Letters from the applicant's spouse's sisters and mother confirm that they are very close and in frequent contact. In her letter the applicant's spouse also voices her concern for her mother's physical and mental well-being, since she still lives with her father, and she claims she wants her mother to live with her so that she can provide her with "peace" and a "happy, loving environment." The qualifying spouse would be unable to provide this care for her mother in Albania. The applicant's spouse also states that she does not speak Albanian and that this factor, coupled with the high unemployment rate in Albania, would make it difficult for her to find gainful employment and to be able to afford basic needs there. The

qualifying spouse also states that the United States has given her the opportunity to further her education and find a good job and that she does not want to "start over from zero." Letters from the qualifying spouse's employer and coworker indicate that she has worked for the same employer for over ten years, that she has been advancing within her field, and that she has great potential for growth within her professional career. Submitted country-conditions documentation reflects that unemployment in Albania was over 13% in 2011 and that women especially struggle to advance economically because of gender discrimination there.

Moreover, the psychologist indicates that, given the qualifying spouse's vulnerable emotional state, relocating to Albania would be "severely detrimental for many reasons," given her inability to speak Albanian, the difficulties she would have finding work, and safety concerns. The applicant indicates that without work, she will be unable to support herself financially in Albania or afford the cost of airfare to visit her family, possibly forcing her to be a burden on the state. Further supporting the assertions that the applicant's spouse's mental health would deteriorate in Albania, the qualifying spouse's long-time friend indicates that she believes the applicant's mental health will suffer upon relocation and that she has already shown "strong signs of distress." Likewise, the applicant's attorney notes that the applicant has been experiencing anxiety over the prospect of relocating to Albania and that such concerns are justified, given conditions there. The record contains reports indicating that organized crime and corruption are pervasive, police protection is limited, and violent crime is increasing. Related to these concerns, the applicant indicates that one reason he left Albania was because his friends were involved with drugs and that he and his parents did not want a similar fate for him.

The record reflects that the cumulative effect of the hardships to the qualifying spouse- in light of her family ties to the United States, the loss of her employment and career advancement, country conditions in Albania and her psychological conditions- rises to the level of extreme. We thus conclude that the applicant's qualifying spouse would suffer extreme hardship if she relocated to Albania to be with him.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The

> favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives).
> *Id.* at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse would face if the applicant is not granted this waiver, whether she accompanied the applicant or remained in the United States; his ties to the United States, including his U.S. citizen infant child; his support of the qualifying spouse and her family; and his reformed good character, as indicated in letters of support from their reverend, family and friends. The unfavorable factors in this matter are the applicant's use of a fraudulent document to enter the United States, his unauthorized employment and his 2008 conviction.

Although the applicant's violations of immigration and criminal law cannot be condoned, the applicant's conviction was over six years ago, and the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

As the applicant's waiver application under 212(i) of the Act has been approved, the applicant also satisfies the requirements for a waiver under section 212(h) of the Act.

ORDER: The appeal is sustained.