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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] OFFICE: MIAMI, FL DATE: JAN 13 2009

IN RE: [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:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Goleman

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida. 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 Macedonia. She 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 seeking to procure admission into the United States by fraud. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), for admission to the United States to remain with her U.S. citizen spouse.

The Acting District Director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, her U.S. citizen spouse, and that the waiver merits a favorable exercise of discretion. The Acting District Director denied the Application for Waiver of Ground of Excludability (now referred to as Inadmissibility) accordingly.

On appeal, counsel for the applicant submits a brief, dated August 29, 2006, and supporting documentation. See *Brief In Support of the Appeal.* The entire record was reviewed and considered in rendering this 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.

Regarding the applicant's ground of inadmissibility, the record reflects that on August 18, 2000, the applicant arrived at Orlando International Airport and presented to the immigration inspector a British passport, claiming to be a citizen of the United Kingdom. She as referred to secondary inspection for further questioning about the passport. The passport was examined and found to be a photo substituted passport. The applicant stated that her husband, , purchased the photo substituted passport from an individual in Macedonia. The applicant signed a statement to withdraw her application for admission indicating that she understood that her admissibility was under question. The applicant's attempt to procure admission into the United States by using a fraudulent passport renders her inadmissible under section 212(a)(6)(C)(i) of the Act.

The record shows that on September 19, 2000, the applicant arrived at Miami International Airport with a passport issued under the name from the Republic of Slovenia, a Visa Waiver Program (VWP) designated country. *See* 8 C.F.R. § 217.2(a). The applicant's arrival record shows that she was paroled into the United States with a Form I-94W.[1] On November 22, 2000, the applicant wed a naturalized U.S. Citizen, in Fort Lauderdale, Florida. The

[1] Form I-94W is the arrival record used for nonimmigrant visitors seeking to enter the United States under the VWP.

applicant's use of a fraudulent passport to procure parole into the United States renders her inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Act for this additional basis.

Section 212(i) of the Act provides:

> (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 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.

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 alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings. 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).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to United States citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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) (citations omitted).

United States courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations

omitted); *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The applicant's spouse, , a naturalized U.S. Citizen, is a qualifying family member for section 212(i) of the Act extreme hardship purposes. Extreme hardship to the applicant's spouse must be established in the event that he accompanies the applicant to Macedonia or in the event that he remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

As evidence of extreme hardship counsel furnished the following relevant documentation:

- Birth certificates for U.S. citizen children;
- Numerous photographs of with his family members;
- County condition reports detailing the economy in Macedonia;
- Permanent Resident Cards for 's stepchildren;
- A Psychological Consultation Report from , of the Psychological & Educational Center for Children & Adolescents;
- A letter from ; and
- A letter from s employer, Limousines of South Florida.

Counsel asserts that a consequence of the denial of the applicant's waiver request would be the separation of family. Counsel states that 's four children, two stepchildren and three grandchildren are U.S. citizens or lawful permanent residents living in the United States. Counsel contends that i cannot be expected to move to Macedonia with his wife and leave his life and children in the United States. Counsel states that **who is 61 years old, would be unable to** find employment in Macedonia because of the poor economy. Counsel notes that if found employment in Macedonia he would earn a low wage and be subjected to poverty.

indicates in his letter that he is in contact with his four U.S. citizen children, who are ages 14, 17, 22 and 26 years old. i asserts that he cannot return to Macedonia because it is in political turmoil and is at war. He contends that he would be unable to economically survive in Macedonia. The letter from s employer in Florida, Limousines of South Florida, dated May 10, 2006, states that has been employed with the company since March 2, 2000, and earns a weekly salary of $800.00 as a bus mechanic.

The psychological consultation report from mirrors counsel's assertions that would suffer extreme hardship if he were to return to Macedonia. states in her report that Mr. 's return to Macedonia would present a traumatic separation to his children and grandchildren. She states that would be unable to enjoy a standard of living in Macedonia similar to his lifestyle in the United States. indicates that the political and economic situations in Macedonia are deplorable and it is a country at war.

Counsel furnished several county condition reports detailing the economy in Macedonia. The AAO notes that the current Central Intelligence Agency report on Macedonia provides, "Some ethnic Albanians, angered by perceived political and economic inequities, launched an insurgency in 2001 that eventually won the support of the majority of Macedonia's Albanian population and led to the internationally-brokered Framework Agreement, which ended the fighting by establishing a set of new laws enhancing the rights of minorities." Central Intelligence Agency, *The World Factbook*, Macedonia, December 18, 2008. The report also notes, "Official unemployment remains high at nearly 35%, but may be overstated based on the existence of an extensive gray market, estimated to be more than 20 percent of GDP, that is not captured by official statistics." *Id.*

According to this report, an internationally-brokered Framework Agreement has ended the fighting in Macedonia. However, the report also notes that the official unemployment rate in Macedonia remains high at 35%. Based upon the high unemployment rate and poor economic conditions in Macedonia, and s strong ties to his children and grandchildren, it has been established that he would suffer extreme hardship if he were to relocate to Macedonia due to the applicant's inadmissibility.

Although hardship to the applicant's spouse in the event that he relocates to Macedonia is material for establishing eligibility for a waiver under section 212(i) of the Act, it is not the only factor to be considered. As stated, extreme hardship to the applicant's spouse must be established in the event that he accompanies the applicant or in the event that he remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request. Here, the applicant has not established that he would suffer extreme hardship if he remained in the United States.

In regard to the hardship would suffer if he remained in the United States without the applicant, the psychological consultation report from provides, " present as a very nice couple. They demonstrated affection towards each other and seem to be making legitimate plans for their future together. It would cause extreme hardship to be separated from his wife." Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the generalized anxiety order suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

Counsel contends that the applicant provides company for Counsel notes that the applicant helps with cooking, cleaning, and she takes care of his needs. Counsel states that is in the process of buying a new home for the applicant and his stepchildren.

states in his letter that he would experience extreme hardship if the waiver is not granted because he loves and cares for the applicant. He notes that he has been established in the United States for many years. states that the applicant is a wonderful and lovely companion who has proved him with much comfort.

The foregoing describes the normal and expected hardships that result from the separation of a marital union. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See* INS v. Jong Ha Wang, *450 U.S. 139 (1981)* (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The record, reviewed in its entirety and in light of the *Matter of Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse, , would face extreme hardship if he remained in the United States without the applicant. The AAO recognizes that the applicant's spouse will suffer emotionally as a result of separation from the applicant. His situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. United States court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to

establish extreme hardship to her United States citizen spouse as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests 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.