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FILE:

Office: NEWARK, NJ Date:

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IN RE:

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:

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Newark, New Jersey, denied the waiver application, and it 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 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 by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen and the father of two U.S. citizen children. He 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 spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated November 23, 2004.

The record reflects that, on April 5, 2002, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an approved Petition for Alien Relative (Form I-130) filed by his spouse. On August 15, 2002, the applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members. On October 18, 2002, the applicant appeared at Citizenship and Immigration Services' (CIS) Newark, New Jersey, District Office. The record reflects that, on July 11, 1997, the applicant applied for admission at Dulles, International Airport by presenting an Albanian passport containing an I-551 Permanent Residence stamp under the name "Ylber Kovaqi."

On September 24, 2004, the district director issued a Notice of Intent to Deny the waiver application and permitted the applicant 30 days in which to submit additional documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members. The applicant requested an additional 30 days in which to submit additional documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members, which was granted. In response to the Notice of Intent to Deny, the applicant submitted an additional affidavit from himself describing the hardships his family would endure, a psychological evaluation for the family, birth certificates for his children, medical documentation for his eldest child, country conditions reports, financial documents and documentation previously provided.

On appeal, counsel contends that the district director's decision abused his discretion in denying the waiver application and the evidence clearly established that the applicant's wife would suffer extreme hardship. He also asserts that the district director denied the Form I-601 because CIS records wrongly indicate that the applicant submitted fraudulent documents to support a prior asylum claim. Counsel further concludes that the denial of the Form I-601 is the result of CIS' mistaken determination that the applicant was working without employment authorization and thus an "immigrant without immigrant documents in violation of section 212(a)(7)(A)(i)(I)" of the Act. *See Applicant's Brief*, dated March 21, 2005.

While the AAO finds that the district director's November 23, 2004, decision raised both of these issues, they were not the basis of his denial of the Form I-601, which he specifically stated was the applicant's failure to provide sufficient evidence to establish that his wife would suffer extreme hardship if he were removed from

the United States. Moreover, as the applicant is clearly inadmissible to the United States under section 212(a)(6)(C)(i) of the Act on the basis of his July 11, 1997, presentation of a photo-substituted passport with counterfeit stamps at a U.S. Port of Entry, the additional issues raised by counsel, specifically his claims regarding the documentation submitted by the applicant in support of a prior asylum application, need not be considered in this proceeding.

The AAO now turns to a consideration of whether the record on appeal supports a finding that the applicant's spouse would suffer extreme hardship as a result of his inadmissibility. In support of the appeal, counsel has submitted the referenced brief, updated country conditions reports and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

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.

Hardship to the alien himself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Congress *specifically* did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship in 212(i) cases. Thus, hardship to the applicant's U.S. citizen children will not be considered in this decision, except as it may affect the applicant's spouse, the only qualifying relative.

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 set forth a list of non-exclusive factors relevant to determining whether an

alien 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 U.S. 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. The BIA has held:

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).

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 record reflects that, on November 12, 2000, the applicant married his spouse, [REDACTED] a U.S. citizen by birth. The applicant and [REDACTED] have a four-year old daughter and a two-year old son who are both U.S. citizens by birth. The record indicates that the applicant and [REDACTED] are in their 30's and the applicant's oldest child may have some health concerns.

On appeal, counsel asserts that [REDACTED] will suffer extreme hardship if the applicant is denied a waiver application because she is currently unemployed and is a stay-at-home mother who has only ever worked part-time. Counsel asserts that [REDACTED] would suffer extreme hardship because she would be without her partner, friend and husband, with whom she has built a life with the expectation that they would live their lives together. Counsel asserts that [REDACTED] would be left with the difficult task of raising her two children alone and witnessing the children's psychological consequences of the removal of their father, such as grief and abandonment which would leave a lasting scar on their psychological upbringing. Counsel also asserts that [REDACTED] would most likely also face her own depression and anxiety. Counsel asserts that [REDACTED] would be forced to sell their house because she could not meet the mortgage payments and would have to move to lower-income housing. Counsel asserts that [REDACTED] would have to pay for daycare for the children, which would be an added expense. Finally, counsel asserts that [REDACTED] may have to supplement whatever meager income she may derive from employment with welfare because she has no employment skills.

The applicant, in his affidavits, asserts that if he is not allowed to remain in the United States [REDACTED] will suffer extreme hardship because she is a stay-at-home mother and cannot work because their children require her maternal care, especially since their daughter is underweight. He states that [REDACTED] would lose an immediate family member upon whom she and the children are very much dependent emotionally, psychologically and financially. He states the psychological consequences of his departure would cause irreparable damage to his family and [REDACTED] would have to find a means to support herself and the children. He states [REDACTED]'s employment would mean an added expense of daycare and her part-time employment income would not be sufficient to support three people, rendering supporting the family a

virtually impossible task. He states that [REDACTED] would have to sell the house they recently purchased and find other accommodations because she would be unable to afford the mortgage payments. He states that his oldest child would not receive the necessary parental care she requires in order to monitor her weight and both his children would have to grow up without a father figure which would have a huge impact on them. He states that [REDACTED] would become a single parent, which would take away from the time she spends raising and caring for the children. Finally he states that, if [REDACTED] were to live without him, her partner, best friend and provider, she would be placed in a position of hopelessness and despair.

Medical documentation indicates that the applicant's oldest child had received medical services from the Pediatric Ambulatory Services of the University of Hackensack's medical center since her birth and that, in October 2004, the child was in the 50<sup>th</sup> percentile for length and 15<sup>th</sup> percentile for weight. While the medical documentation indicates that the applicant and [REDACTED] spend a large amount of time assuring that their oldest child intakes sufficient calories and that her mother wished to stay home with the child to ensure good growth and development because her growth parameters had worsened when she had been in the care of a sitter, the documentation does not indicate whether the child requires long-term medical care, what the prognosis is for her condition, that her treatment requires the presence of the applicant and/or [REDACTED] or that she would be unable to receive appropriate medical treatment in the absence of her parents.

Financial records indicate that, in 2001, [REDACTED] was employed as an accountant on call with an hourly income of \$15.00. The record reflects that [REDACTED] has family members in the United States who may be able to assist her physically and financially in the absence of the applicant. As discussed above, there is no evidence to suggest that [REDACTED] would be unable to work a full-time schedule due to any physical or mental illnesses from which her child may suffer. The record reflects that [REDACTED] holds an MBA from Rutgers and there is no evidence that she has no employment skills or would be unable to obtain a full-time position, which would be sufficient to support the family. The record shows that, even without assistance from family members or the applicant, if [REDACTED] were to work only 20 hours per week at her previous part-time employment pay she has, in the past, earned more than sufficient income to exceed the poverty guidelines for her household in the United States. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While it is unfortunate that, if the children were to remain in the United States, [REDACTED] would essentially become a single parent and professional childcare may be an added expense and not equate to the care of a parent, this is not a hardship that is beyond those commonly suffered by aliens and families upon removal. While [REDACTED] may have to lower her standard of living and move her accommodations, there is no evidence in the record to support a finding of financial loss that would result in an extreme hardship to [REDACTED] if she had to support her family without additional income from the applicant, even when combined with the emotional hardship described below.

The record does not contain evidence that [REDACTED] or the applicant's children have received psychological treatment or evaluation other than single appointment used to write the psychological report. Therefore, the psychological report may be given little weight. Additionally, the psychological report does not diagnose any of the family members with any existing or pre-existing mental illnesses or indicate that they require treatment. While the psychological report indicates that separation of the family members would result in the children being abruptly and painfully deprived of a beloved father's presence leaving them with feelings of grief and abandonment similar to those experienced when a loved one dies and possibly leading to

long-term relationship consequences, there is no evidence in the record to suggest that the applicant's children suffer from a physical or mental illness that would cause [REDACTED] to suffer hardship beyond that commonly suffered by aliens and families upon removal. While the psychological report indicates that separation of the family members would likely result in [REDACTED] battling her own depression and anxiety, there is no evidence in the record to suggest that [REDACTED] suffers from a physical or mental illness that would cause her to suffer hardship beyond the commonly suffered by aliens and families upon removal. While it is unfortunate that [REDACTED] will be separated from the applicant and she will witness her children's separation from the applicant, this is not a hardship that is beyond those commonly suffered by aliens and families upon removal.

Counsel asserts that [REDACTED] would suffer extreme hardship if she and the children accompanied the applicant to Albania because the applicant and [REDACTED] would have difficulty in obtaining employment since the applicant has been absent from Albania for over 8 years and the economic conditions in Albania are extremely poor. Counsel asserts that the applicant's eldest child has a nutritional problem for which she would be unable to receive proper medical care in Albania because the country is poor and medical care is not easily obtainable. Counsel states that the crime rate in Albania is very high. Counsel asserts that [REDACTED] could not accompany the applicant to Albania because all her family members are in the United States, she does not speak the language and assimilation into the language and culture, while also raising two children, would be very difficult to do, especially without her family's support. Counsel asserts that the applicant's children would be unable to obtain an education because they do not speak the language and they will be torn from the only surroundings and extended family they have ever known.

The applicant, in his affidavits, states that [REDACTED] would suffer extreme hardship if she were to accompany him to Albania because it would place her and the children in a very difficult situation. He states [REDACTED] does not speak the language and the country is dangerous and poor. He states it would be extremely difficult for [REDACTED] because all her family and friends live in the United States. He states it would be impossible for [REDACTED] to move to a country about which she knows nothing and where the way of life is very different from that in the United States.

Having analyzed the hardships the applicant and his counsel claim [REDACTED] will suffer if she were to accompany the applicant to Albania, the AAO finds that they do not constitute extreme hardship. There is no evidence in the record to suggest that the applicant and [REDACTED] would be unable to obtain any employment in Albania. While the employment they may be able to obtain may not be comparable to the employment they have in the United States, economic detriment of this sort is not unusual or extreme. *See Perez v. INS, Supra; Ramirez-Durazo v. INS, 794 F.2d 491, 498 (9th Cir.1986)*. While the psychological report indicates that [REDACTED] has been sheltered by her upbringing in a privileged environment in the United States, would find difficulty in obtaining employment in Albania, and be subjected to physical danger, culture shock and loss of familiar and comforting things, there is no evidence in the record to suggest that [REDACTED] or the applicant's children suffer from a mental illness that would cause [REDACTED] to suffer hardship beyond that commonly suffered by aliens and families upon removal. While the medical documentation indicates that the applicant's eldest child had a weight problem, there is no evidence in the record to suggest that [REDACTED] or the children suffer from a physical or mental condition that could not be treated in Albania. While country conditions reports indicate that Albania continues to experience high levels of violent crime, the reports indicate that the violent crime is associated with individual or clan

vigilante actions connected to traditional blood feuds or criminal gang conflicts. *United States Department of State Country Reports on Human Rights Practices, Albania, 2005*, [www.state.gov/g/drl/rls/hrrpt/2005/61633.htm](http://www.state.gov/g/drl/rls/hrrpt/2005/61633.htm). There is no evidence in the record to suggest that the applicant and his family would be subject to the high crime rates due to a traditional blood feud or membership in a gang. The AAO also notes that, in 1998, the applicant applied for asylum based on a claim that he feared persecution for an imputed political opinion. Although counsel indicates that the applicant fears that if [REDACTED] returns with him to Albania she would also be at risk from the Albanian authorities, the AAO notes that, since the applicant's departure from Albania, country conditions have altered. The political party in power has changed a number of times and the political group to which the applicant claimed the government had imputed his association has been in power during this time frame. *United States Department of State Background Notes, Albania*, [www.state.gov/r/pa/ei/bgn/3235.htm](http://www.state.gov/r/pa/ei/bgn/3235.htm). Moreover, country condition reports indicate that there are no politically motivated killings or disappearances in Albania. *United States Department of State Country Reports on Human Rights Practices, Albania, 2005*, [www.state.gov/g/drl/rls/hrrpt/2005/61633.htm](http://www.state.gov/g/drl/rls/hrrpt/2005/61633.htm). While the hardships faced by [REDACTED] with regard to her and the children adjusting to a new culture and language, the family adjusting to the economy, environment, separation from friends and family and an the inability to obtain opportunities that are available to them in the United States are unfortunate, they are what would normally confront any spouse accompanying a removed alien to a foreign country. Additionally, the AAO notes that, as U.S. citizens, the applicant's spouse and children are not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if she remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. 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 section 212(i) of the Act, 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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 AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). 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(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.