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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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Officer in Charge, Jacksonville, Florida, 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 having procured admission to the United States by fraud or willful misrepresentation. The applicant is the son of two naturalized U.S. citizen parents. 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 parents.

The officer in charge 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 Officer in Charge*, dated March 31, 2005.

The record reflects that, on October 4, 1996, the applicant's father filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on December 23, 1996. On April 24, 2000, the applicant filed an Application for Asylum and Withholding of Removal (Form I-589). On May 24, 2000, the applicant appeared at the Miami, Florida Asylum Office. The applicant testified that, on August 5, 1998, he was admitted to the United States after he presented an Albanian passport under the name [REDACTED]. The applicant's Form I-589 was subsequently rejected and he was placed into immigration proceedings on June 29, 2000. On February 7, 2001, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on the approved Form I-130. On February 15, 2001, the immigration judge terminated proceedings in order to give the applicant an opportunity to apply for adjustment of status based on the approved Form I-130 under section 245(i) of the Act, 8 U.S.C. § 1255(i). The Form I-485 was denied because there was no immigrant visa number immediately available to the applicant. On March 28, 2002, the applicant's father became a naturalized U.S. citizen.

On January 23, 2004, 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 appeal, counsel contends that the applicant's mother would suffer extreme hardship if the applicant were removed from the United States. *See Applicant's Brief*, dated April 12, 2005. In support of his contentions, counsel submitted the referenced brief, a copy of a tracking receipt for documentation previously provided and a statement in regard to the applicant's eligibility for a waiver. 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.

The officer in charge based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the applicant's admission to obtaining entry into the United States by fraud in 1998.

On appeal, counsel contests the officer in charge's determination of inadmissibility. Counsel asserts that, during his asylum interview, the applicant was not assisted by an interpreter and was forced, by the interviewing officer, to name a specific airport through which he entered the United States. Counsel also asserts that, under duress, the applicant provided the interviewing officer with a name that was not his own for the passport he used to enter the United States. The record reflects that, during the asylum interview, the applicant utilized an Albanian-language translator, and executed a sworn statement indicating that it was freely and voluntarily made to the interviewing officer. In that statement the applicant indicated that he had presented an Albanian passport in the name of another individual at the New York Port of Entry on August 5, 1998. The AAO, therefore, finds that the applicant admitted to obtaining admission to the United States by fraud in 1998.

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.

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 the applicant's mother, [REDACTED], is a native of Albania who became a lawful permanent resident in 1996 through the diversity visa lottery and a naturalized U.S. citizen in 2002. The applicant's father, [REDACTED], is a native of Albania who became a lawful permanent resident in 1996 through the diversity visa lottery and a naturalized U.S. citizen in 2002. [REDACTED] have an adult son who is a native of Albania who became a lawful permanent resident in 1996 through the diversity visa lottery and a naturalized U.S. citizen in 2001. The record reflects further that the applicant is in his 30's, [REDACTED] are in their 50's, and [REDACTED] may have some health concerns.

Counsel contends that the applicant's mother will suffer extreme hardship if she were to remain in the United States without the applicant because she has been diagnosed with major depressive episode, recurrent and severe, and has physical illnesses, such as fibromyalgia, true migraine headaches and a chemical affect disorder that respond adversely to stress like that created by the removal of her son. The applicant, in his affidavit, states that he, his parents and brother all reside at the same residence and share the living expenses. He states that his mother has high blood pressure, chronic headaches for which she takes medication and fibromyositis, an inflammation of the muscle tissue. He states that [REDACTED] is still undergoing physical therapy following an April 2003 surgery on her right shoulder and has been receiving unemployment benefits since November 2003. He states that both his father and brother are employed. He states that, considering the age and health of his parents, if he is removed their separation could result in a lifetime separation. He states that in Albania the eldest son shares and assumes the family responsibilities and if he is not permitted to remain in the United States there will be a void in the family structure and the burden would unfairly fall on his younger brother. He states that his parents would worry whether he would be able to survive in Albania and would have to send him money to support him until he is reestablished in Albania. [REDACTED] in his affidavit, states that he does not want his son to return to Albania and that the family belongs together. [REDACTED] in her affidavit, states she has had surgery on her right shoulder for which she continues to undergo physical therapy and is receiving unemployment benefits. She states that, although he is an adult, she worries about the applicant's safety and she will be very unhappy if the applicant is returned to Albania. She states that she needs her son with her and does not know if she will ever see him again if he is removed.

Financial records indicate that, in 2001, [REDACTED] earned approximately \$20,498. While the applicant asserts that traditionally he should be the one to assume the family responsibilities, there is no evidence in the record to suggest that the applicant's younger brother would be unable to provide [REDACTED] and [REDACTED] with financial and physical assistance in the absence of the applicant. There is no evidence in the record to suggest that the applicant upon return to Albania would be unable to obtain *any* employment that would provide a source of income that would ease his parent's financial obligations to support him until he is reestablished.

The record shows that, even without assistance from the applicant or other family members, [REDACTED], in the past, has earned sufficient income to exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. While [REDACTED] may have to lower their standard of living, there is no evidence in the record to support a finding of financial loss that would result in extreme hardship to [REDACTED] if they had to support themselves without additional income from the applicant, even when combined with the emotional hardship described below.

While counsel indicates that a copy of a report from [REDACTED] in regard to [REDACTED]'s mental and physical illnesses accompanied the appeal, a copy of the report is not included in the appeal. As such, there is no evidence in the record to indicate that [REDACTED] or [REDACTED] suffer from a physical or mental illness that would cause them to suffer hardship beyond that commonly suffered by aliens and families upon removal. Additionally, the record reflects that [REDACTED] and [REDACTED] have family members in the United States, such as their other adult son, who may be able to assist them physically and emotionally in the absence of the applicant.

Counsel, the applicant, [REDACTED] and [REDACTED] do not assert that the applicant's parents would suffer extreme hardship if they accompanied the applicant to Albania. The AAO is, therefore, unable to find that the applicant's parents would suffer extreme hardship should they choose to accompany the applicant to Albania. Finally, the AAO notes that, as U.S. citizens, the applicant's parents 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 they 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 parents would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a son 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 (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 AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen parents 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 an 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.