U.S. Department of Homeland Security
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PUBLIC COPY

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: ATHENS, GREECE Date: JUN 04 2008

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Athens, Greece, and 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 sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(i)(II) and 1182(a)(6)(C)(i), for having been unlawfully present in the United States for one year or more and having sought admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant initially attempted to enter the United States with a fraudulent Albanian passport and U.S. visa on February 22, 2000 and he was placed in removal proceedings after it was determined he had a credible fear of persecution in Albania. The applicant was denied asylum by the immigration judge and granted voluntary departure. He appealed the decision to the Board of Immigration Appeals (BIA) and failed to depart the United States after the appeal was dismissed on February 4, 2004. He remained in the United States until March 2005, when he traveled to Greece to apply for an immigrant visa. The applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), in order to return to the United States and reside with his spouse.

The officer-in-charge concluded that the applicant 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 January 5, 2006.

On appeal, counsel asserts that the applicant's wife is suffering extreme emotional and financial hardship due to being separated from the applicant. Counsel further contends that the applicant's wife would suffer emotional and economic hardship if she were to relocate to Greece or Albania with the applicant. Specifically, counsel states that the applicant's wife is suffering from depression due to her separation from the applicant and she is unable to support herself and their daughter on her income alone and provide financial support to the applicant in Greece. Counsel further claims that the applicant's wife would suffer extreme hardship in Greece, where the applicant is currently residing, and in Albania, the applicant's country of citizenship. In addition to documentation submitted with the waiver application, counsel has submitted with the appeal documentation concerning the applicant's wife's current psychological and physical condition, evidence of her income and employment history, and documentation of political and economic conditions in Albania and Greece, including information concerning the applicant's wife's ability to pursue her career in biotechnology in Greece.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who –
>
> (II) Has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
>
> . . . .

(v) Waiver. – The Attorney General [now Secretary, Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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:

(1) The [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.

The AAO notes that the record contains several references to the hardship that the applicant's daughter would suffer if the applicant were refused admission to the United States. Sections 212(a)(9)(B)(v) and 212(i) of the Act provide that a waiver is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship. The applicant's spouse is the only qualifying relative for the waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act, and hardship to the applicant's daughter will therefore not be separately considered, except as it may affect the applicant's spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a thirty-six year-old native and citizen of Albania who resided in the United States from February 2000 until March 2005, when he traveled to Greece to apply for an immigrant visa. The applicant applied for asylum before the immigration judge and his application was denied on September 24, 2002 because it was determined he was firmly resettled in Greece. The applicant appealed the decision to the Board of Immigration Appeals and the appeal was dismissed on February 4, 2004. The applicant failed to depart the United States until March 2005, and the order of voluntary departure issued by the immigration judge converted to a removal order. The applicant is of Greek descent and resided in Greece with his parents as a legal resident from 1991 to 1999. Counsel states that the applicant has applied to renew his resident permit in Greece, and it is not clear whether he was granted this status. Documentation submitted with the appeal states, however, that Albanians of Greek descent are entitled to lawful status as aliens of Hellenic descent. *See* [redacted] *"Citizenship in Greece: Present Challenges for Future Changes,"* at 7.

The applicant's wife is a thirty-six year-old native of Albania and naturalized U.S. Citizen who has resided in Portland, Maine since 1996. She currently resides there with her daughter, who is now three years old, and works for a biotechnology company while pursuing a Masters degree at the University of Southern Maine. She is also of Greek descent and resided with her parents in Greece from 1990 to 1996. Her parents still reside there. *See affidavit of* [redacted] dated July 21, 2005; *affidavit of S* [redacted] dated March 20, 2006.

Counsel asserts that the applicant's wife is suffering extreme emotional, physical, and economic hardship due to being separated from the applicant. In support of this assertion, counsel submitted an evaluation of the applicant's wife's mental health from a psychologist who met with her on four occasions in January and February 2006. The evaluation states that the applicant's wife is experiencing "a pervasive depressive mood with a loss of interest and enthusiasm with low energy and fatigue." It further states that she has considered suicide at times but did not seem "in present danger to harm herself but that would have to be monitored." *See evaluation from* [redacted] at 1. [redacted] diagnosed the applicant's wife as suffering from Dysthymia (or Depressive Neurosis) and states, "[redacted] has been conscientious about attending and working in therapy . . . . This appears to have been marginally helpful." *Id.* at 2. He further states that in his professional opinion, the Dysthymia "is directly related to the immigration issues and has caused [redacted] considerable emotional distress over an extended period." *Id.*

Counsel also submitted a letter from the applicant's wife's primary care physician stating that she suffers from depression and that her symptoms are worsening because her husband is unable to return to the United States. *See letter from* [redacted] *dated May 26, 2005.* The letter, which was originally submitted

with the waiver application, also contains a hand-written notation dated February 28, 2006 indicating that her severe depression continues. The record also contains medical records indicating that the applicant's wife has been diagnosed with depression and prescriptions for Prozac dated January 18, 2005, May 16, 2005, and February 28, 2006. Counsel also submitted with the appeal letters and evaluations from the applicant's employer indicating that her work performance has suffered due to her separation from her husband, including a letter that states:

> it is clear that a significant change in performance has occurred since [redacted] and [redacted] returned from Greece and left [redacted] behind. Since her return [redacted]s ability to focus on project details, her responsiveness to technical input, her reliability in follow-up and her ability to creatively troubleshoot technical issues have all been negatively impacted. [redacted] regularly appears distracted and stressed beyond the norm for her current technical work load. [redacted]s attitude and normal upbeat disposition have been replaced with an agitated, negative demeanor.... The change in performance will impact her ability to excel and grow in her current position and ultimately will impact her earning potential . . . . *Letter from* [redacted] *Director of Operations, Maine Biotechnology Services,* dated June 17, 2005.

Upon a complete review of the evidence on the record, the AAO finds that the applicant has established that his wife would experience extreme hardship if she remains in the United States and he is prohibited from returning to the United States. Evidence on the record establishes that the applicant's wife is experiencing severe depression due to being separated from the applicant, and this condition is affecting her concentration and work performance, thereby jeopardizing her ability to support herself and her daughter. Her physician and a psychologist have both made this diagnosis and have stated that continued separation from her husband is exacerbating her condition. Further, the condition is serious enough that the applicant's wife has in the past contemplated suicide, and the psychologist noted that she should be monitored to ensure there is no risk she would harm herself. While the record does not contain specific evidence concerning the therapy the applicant's wife is receiving, the evaluation does state that she has been in therapy but she continues to suffer from depression, and there is sufficient documentation to show that her emotional health has been deemed tenuous by her doctor and a mental health professional. It therefore appears that if the applicant's wife remains in the United States separated from the applicant, she would suffer emotional hardship beyond that which is normally experienced by family members as a result of removal or deportation. The applicant's wife is also experiencing financial hardship due to the loss of the applicant's income and the childcare expenses that were not needed when the applicant cared for their daughter while his wife worked. *See affidavit of* [redacted] *letter from* [redacted]*, the applicant's employer in the United States,* dated April 3, 2005. The emotional and financial hardship experienced by the applicant's wife amount in the aggregate to extreme hardship if the applicant's wife remains in the United States.

To support the assertion that the applicant's wife would also suffer extreme hardship if she were to relocate to Albania, counsel submitted information concerning economic conditions and human rights abuses in Albania and information concerning persecution experienced by relatives of the applicant while they resided in Albania. The applicant's wife states in her affidavit that although the government in Albania has changed since the applicant fled the country in 1991, many of the same individuals remain in power. She states, "[redacted]s persecutors are likely still part of the Socialist Party and hold government offices in Albania. . . . If [redacted] is forced to return to Albania, there is a high likelihood that – based on his family's previous political activities in Albania he will face persecution from the Communist-oriented factions that still operate in

Albania." The applicant's wife further fears that she and her daughter would be in danger in Albania due to their Greek ethnicity and association with the United States. The AAO notes that the applicant's fear of persecution in Albania was not assessed by the immigration judge because he was deemed to be firmly resettled in Greece, and it appears political conditions have changed considerably since the applicant and his wife left Albania. Nevertheless, the applicant's family and his wife's family have all left Albania and they have no ties to the country, which they both left nearly eighteen years ago. Their lack of ties to Albania, when combined with the current corruption and persistence of human rights abuses and the poor economic conditions, would lead to extreme hardship to the applicant's wife if they relocated to Albania.

Counsel additionally asserts that the applicant's wife would suffer extreme hardship if she relocated to Greece because she would have to leave her job as a Cell Culture Production Scientist with Maine Biotechnology Services, where she has worked since 1997. She would also lose the opportunity to pursue an advanced degree in biotechnology with the assistance of the company's tuition reimbursement program for its employees. *See letter from* [redacted] *Director of Operations, Maine Biotechnology Services,* dated March 1, 2004. Counsel submitted performance evaluations and letters from the applicant's employer as well as information on the biotechnology industry in Greece. The evidence submitted indicates that the applicant's wife began working as a cell culture technician and was promoted after she earned a Bachelor's degree in biology from the University of Southern Maine. *See letter from Maine Biotechnology Services* dated October 25, 2001. Counsel states that the applicant's wife would have "no chance of obtaining a job in her chosen field, biotechnology, since it is not a big industry in Greece." *Brief in Support of Appeal.* In support of this claim, counsel submitted an article indicating that public awareness about biotechnology in Greece is low and the industry is not well-developed, and no biotechnology start-up company was operating in the country as of 1999. *See* George Sakellaris, *Book Chapter on Biotechnology in Greece* at 93. Counsel also submitted an article discussing the difficulty graduates of foreign universities have when seeking recognition of a foreign degree in Greece, and a copy of a decision from the European Court of Human Rights finding that Greece's foreign educational evaluation process was unreasonably burdensome.

Although it appears the applicant would have greater opportunities for career advancement in the biotechnology field in the United States than in Greece, where the industry is not as developed, the record does not establish that she would be unable to find employment in this field or comparable employment in Greece. The article and book chapter submitted discuss the lack of biotechnology education policy in Greek schools and the resulting low level of public awareness, but do not support the assertion that there is no biotechnology industry in Greece. The book chapter submitted by counsel states that although there are no start-up companies, "Multinationals are the local leaders in the field . . . . There are almost no local industrial partners for the biotech research programmes in Greece so most collaborations made are either with multinationals or with foreign companies abroad." *See Book Chapter on Biotechnology in Greece* at 93. This indicates that there is biotechnology research being conducted in Greece, even if the companies sponsoring this work are not Greek entities but multinational or foreign companies.

The applicant's wife states, "Biotechnology in nowhere near as developed in Albania or Greece as it is in the U.S. There is no comparable program, industry or career path available to me, particularly in my area of specialization." *See affidavit of* [redacted] at paragraph 14. She further states that in Greece she "would be lucky to get a job working at a pizzeria, the only work [she] could find when [she] lived in Greece before." *Id.* Difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment, relevant to a claim of hardship but not sufficient to require relief. *See Carnalla-Munoz v. INS*, 627

F.2d 1004, 1006 n.4 (9th Cir. 1980); *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356, 1358 (9th Cir. 1981) (citations omitted); *Kasravi v. INS*, 400 F.2d 675, 767 (9th Cir. 1968). Further, financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The circumstances in this case do not lead to a finding that the applicant and his family would be completely deprived of a means to survive in Greece, only that the applicant's wife might have difficulty finding work in her chosen profession and their standard of living could be reduced.

Counsel further asserts that the applicant and his wife would face discrimination in Greece because, although they are of Greek ethnicity, they were born and raised in Albania. The applicant's wife states: "Albanians are still considered second-class citizens in Greece. The prejudice was so strong and distinct, my family and I were made to feel ashamed about having been born and raised in Albania." *See affidavit of* at paragraph 5. In support of this claim, counsel submitted an article stating that the Greek government discriminated against Albanians residing in the country by denying them tickets to a football match between Greece and Albania that took place in Athens. *See BBC News, "Albania fans cry foul at Greek 'ban',"* April 1, 2005. Counsel also submitted reports describing incidents of shootings and mistreatment by Greek police and border guards of Albanians residing in Greece, including Albanians attempting to enter the country with or without authorization. *See Amnesty International, Annual Report 2005: Greece.* Although it appears there is some discrimination against Albanians in Greece, the evidence does not establish that there is widespread abuse and mistreatment of Albanians, including ethnic Greek Albanians like the applicant and his wife, such that his wife would suffer extreme hardship if she returned to Greece.

The AAO further notes that although the applicant's wife states she was denied a residency permit in Greece and that the applicant's application for residency was pending at the time the appeal was submitted, it appears that according to Greek law they are both eligible for residence status there. An article submitted with the appeal states that members of the Greek minority in Albania, though not eligible for Greek citizenship, are granted a special identity card "equal to a residence and work permit giving access to special benefits for social security, health, and education." *See* [redacted] *"Citizenship in Greece: Present Challenges for Future Changes,"* at 7. The applicant held this status at the time he left Greece and his asylum application was denied due to a determination by the immigration judge that he was firmly resettled in Greece. *See Decision of the Immigration Judge,* September 24, 2002; *see also letter from Dimitris Macrynikolas, Consul of Greece in Atlanta,* dated May 3, 2001 (explaining the rights granted to holders of the "Special Identity Card for Aliens of Hellenic Descent").

The record reviewed in its entirety does not support a finding that the applicant's spouse faces extreme hardship if she relocates to Greece, where her parents also reside, to live with the applicant. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. The emotional and financial difficulties that the applicant's wife would suffer appear to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *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).

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. Citizen spouse would suffer extreme hardship if she relocated to Greece to live with the applicant. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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 remains entirely with the applicant. 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.