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U.S. Department of Homeland Security
20 Mass. Ave., NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: CLEVELAND, OH

Date: OCT 15 2008

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Cleveland, Ohio 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 section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen and has a United States citizen child. She 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 her family.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated March 20, 2006.

On appeal, counsel contends that the District Director erred in denying the application and that the applicant's spouse would suffer extreme hardship if she were removed from the United States. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, published country conditions reports; an employment letter for the applicant's spouse; earnings statements for the applicant's spouse; W-2 forms for the applicant's spouse; a statement from the applicant's spouse; a statement from the mother of the applicant's spouse; a statement from [REDACTED]; a statement from [REDACTED], MD; a statement of the applicant's spouse's employment pay history; a bank statement; and tax statements for the applicant and her spouse. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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 that:

- (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 record reflects that the applicant attempted to gain admission to the United States by presenting a false passport with the name [REDACTED] on February 9, 2002 at the airport in Chicago, Illinois. *Form I-867, Record of Sworn Statement*. During a secondary inspection interview, the applicant admitted to using the false passport. *Id.* The AAO thus finds that the applicant attempted to procure admission into the United States by fraud or

willful misrepresentation of a material fact and is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the inadmissibility imposes extreme hardship on the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant herself or her child would experience upon her removal is not directly relevant to the determination of her eligibility for a waiver under section 212(i). The only hardship relevant to the present case is the hardship that would be suffered by the applicant's U.S. citizen spouse if the applicant is removed. Hardship to the applicant's child will be considered to the extent that it affects the applicant's spouse. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's qualifying relative must be established whether he resides in Albania or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Albania, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The applicant's spouse's father was born in the Dominican Republic and his mother was born in the United States. *Id.* The parents of the applicant's spouse live in the United States. *Id.* The applicant's spouse does not have any cultural ties to Albania, nor does he speak the language. *Statement from the applicant's spouse*, dated February 7, 2006; *Attorney's brief*. The applicant does not have any employment experience. *Form G-325A, Biographic Information sheet, for the applicant*. In the United States, the applicant cares for their daughter and the applicant's spouse is the only salary in the house. *Attorney's brief*. Due to the language barriers, the applicant's spouse asserts that he would not be able to find a job. *Statement from the applicant's spouse*, dated February 7, 2006. According to published country conditions reports, Albania is one of the poorest countries in Europe with the official unemployment rate being 16% and 30% of the population below the poverty line. Two-thirds of all workers are employed in the agricultural sector. *Background Note: Albania, United States Department of State*, dated September 2005. While the AAO notes that the applicant's child is not a qualifying relative in this particular case, it acknowledges the financial impact of a child on the applicant's spouse. Given the lack of familial and cultural ties to Albania and the employment barrier created by language, the AAO finds that the applicant's spouse would be unlikely to obtain a job in Albania and recognizes the significant impact this would have upon the family's financial well-being. When looking at the aforementioned factors, the AAO finds that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Albania.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born and raised in the United States. *Form G-325A, Biographic Information sheets, for the applicant's spouse*. He asserts that if he were separated from the applicant, there is no way he could support the applicant and their daughter, along with having to support himself. *Statement from the applicant's spouse*, dated February 7, 2006. The applicant's spouse has consistently made less than \$20,000. a year. *Tax statements for the applicant and her spouse*, dated 2002, 2003 and 2004; *Forms W-2*. In 2005, the applicant's spouse made just over \$21,000. a year. *Earnings statements for the applicant's spouse; Attorney's brief*. The AAO observes that while the parents of the applicant's spouse live in the United States, his mother lives in Gainseville, Florida and his father lives in Lafayette, Louisiana. *Form G-325A, Biographic Information sheets, for the applicant's spouse*. The applicant's spouse would have to find a babysitter to care for his daughter so that he could work full-time. *Statement from the applicant's spouse*, dated February 7, 2006. According to the mother of the applicant's spouse, separating this family would be extremely difficult for the applicant's spouse mentally and spiritually. *Statement from the mother of the applicant's spouse*, dated February 1, 2006.

While the AAO acknowledges these economic difficulties and emotions, U.S. court decisions have repeatedly 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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, *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. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States. 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(a)(6)(C) of the Act, the burden of proving eligibility remains entirely 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.