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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE:

Office: TAMPA, FL

Date: JUL 02 2009

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.

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Tampa, Florida, 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 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's spouse is a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

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*, at 4, dated April 28, 2009.

Counsel states that the denial decision was based on foul arguments and an incorrect application of the law. *Form I-290B*, at 2, received May 29, 2009.

The record includes, but is not limited to, counsel's brief, prior counsel's I-601 brief, the applicant's spouse's statements, medical documentation relating to the applicant's spouse, and country conditions information on Albania. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on November 10, 2004, the applicant presented a photo-substituted passport and visa while seeking admission to the United States. Based on the applicant's misrepresentation, he is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.¹

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

¹ The AAO notes the applicant's convictions under 18 U.S.C. § 1543 for forgery or false use of passport and 18 U.S.C. § 1546(a) for fraud and misuse of visas, permits, and other documents, for which he was sentenced on December 30, 2004. The AAO will not determine whether these are crimes involving moral turpitude as the requirements of the relevant section 212(h) waiver would be met upon a grant of the instant 212(i) waiver application.

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.

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, in this matter, the applicant's spouse. Hardship to the applicant is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship may affect the qualifying relative. 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 AAO notes counsel's claims that the applicant's case is distinguishable from some of the cases cited by the district director. *Brief in Support of Appeal*, at 4, undated. The AAO notes that the district director cited these cases to establish general principles for determining extreme hardship, not as examples of cases involving similar facts. The AAO will adjudicate the applicant's appeal based on the relevant case law.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or U.S. 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 spouse must be established whether she resides in Albania or in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Albania. Counsel states that the applicant's spouse was born and raised in the United States, her entire family was born and raised in the United States, she would be separated from her family and church, she has a lifetime of community ties, she would not be able to go on with her life without emotional support from her parents and siblings, the sanitary conditions in Albania are very poor, government assistance in Albania does not exist at all, the applicant's spouse has a medical condition that requires the attention of specialists, she does not speak Albanian, she will not be able to find a job due to language issues, she is Christian and Albania is predominantly Muslim. *Brief in Support of Appeal*, at 2-3. Prior counsel states that the applicant's spouse would lose meaningful contact with her family due to the cost of travel and telephone calls; Albania has appalling social, economic and political conditions; and its per capita income is among the lowest in Europe. *Brief in Support of I-601*, at 2, dated February 22, 2009.

The applicant's spouse states that she has to be under constant medical care, does not want to take the chance of not being able to see a specialist when she needs to, would feel uneasy living in a predominantly Muslim country, would feel uncomfortable living in a country where religion is not a big part of people's lives, was raised a Protestant and practices her religion, wants her son to get to know her family and friends, loves her job and adores her house. *Applicant's Spouse's Second Statement*, at 2-4, undated. The applicant's spouse states that she has never traveled outside the United States, she is employed as a private school teacher, she would lose her position at the school and have an extremely difficult time gaining future employment if she returned, the economic situation in Albania is very difficult at this time, in 2008 the doctors noticed that the size of nodules in her thyroid had increased and she had a biopsy, the doctors suggested that the nodules be closely monitored as they can become malignant, and the doctors are hesitant to remove them as it would require removing parts of her thyroid. *Applicant's Spouse's First Statement*, at 1-3, dated February 15, 2009. The record reflects that the applicant's spouse has multinodular goiter and symptoms of dysphagia, and will need monitoring for her condition in the future. *Letter from* [REDACTED] dated May 13, 2009. The record reflects that medical facilities and capabilities in Albania are limited beyond rudimentary first aid. *Department of State Country Specific Information, Albania*, at 2, dated November 4, 2008. An associate pastor of the Faith Lutheran Church states that the applicant's spouse is connected with the Faith Lutheran Church, the congregation is a source of strength and compassion for her, and it would be difficult to raise her child with a spiritual nature in a country that barely recognizes the existence of the Lutheran Church. *Letter from* [REDACTED] [REDACTED], dated May 26, 2009. The record reflects that the applicant's spouse is currently being seen for individual psychotherapy for the treatment of anxiety associated with recent stressors in her personal life. *Letter from* [REDACTED] [REDACTED] dated May 19, 2009. Based on the totality of the record, the AAO finds that the applicant would experience extreme hardship as a result of relocating to Albania.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant's spouse was diagnosed in 2001 with nodules on her thyroid, the physicians' main concern is that the nodules are cancerous, the physicians have advised that the nodules be continuously monitored, in June 2008 physicians in Florida noticed that the size of the nodules had increased, they are hesitant to remove them as this would require removing parts of the thyroid, the applicant's spouse has developed stress and anxiety due to the pressure of finding a way to handle her serious illness, the applicant's spouse is pregnant with the couple's first child, the applicant provides her with emotional and material help, it would be costly for the applicant's spouse to get a childcare provider or she would require employment with fewer hours, and it would be impossible for the applicant's spouse to travel back and forth to Albania due to her health condition. *Brief in Support of Appeal*, at 2-3. The AAO notes that the medical documentation provided by the record does not support counsel's claims related to the applicant's spouse's medical issues. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant's spouse states that she found out she was pregnant in December 2008, that without the applicant she will be responsible for caring for the baby and taking care of the bills herself, she

cannot afford to cover all of the bills with her salary, the applicant makes a lot more money than she does, she does not want her son to grow up without a father, and her graduate education would have to be put on hold. *Applicant's Spouse's Second Statement*, at 3. The record reflects that August 15, 2009 is the applicant's spouse's estimated date of delivery. *Letter from Sun Coat Women's Care*, dated May 11, 2009. The record does not include evidence of the applicant's bills or sufficient evidence to establish financial hardship.

The record reflects that the applicant's spouse is currently being seen for individual psychotherapy for the treatment of anxiety associated with recent stressors in her personal life. *Letter from* [REDACTED] [REDACTED]. However, the letter does not specify the stressors, the mental/emotional state of the applicant's spouse, or the effect on her mental health if she were separated from the applicant. The associate pastor of the Faith Lutheran Church states that it would be difficult for the applicant's spouse to raise her child with a spiritual nature that is helpful to his development apart from the applicant. *Letter from* [REDACTED]

The record does not include sufficient evidence of financial, emotional, medical or other hardships should the applicant's spouse remain in the United States without the applicant. Based on the record, the AAO finds that the applicant has not provided sufficient evidence to establish that his spouse would suffer extreme hardship if she were to remain in the United States without him.

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 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 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.