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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: COLUMBUS, OHIO Date: NOV 19 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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.

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).

Michael Shumway

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director denied the instant waiver application, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant in this case has filed two waiver applications. She filed the first on September 28, 2005. That application was denied on March 28, 2006 and was not appealed. She filed the second waiver application on October 4, 2006. It was denied on March 29, 2008 and she appealed. That is the waiver application with which this decision is concerned.

The record reflects that the applicant is a native and citizen of Albania, the wife of a U.S. citizen, the mother of three U.S. citizen children,[1] and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant seeks a waiver of inadmissibility in order to reside in the United States with her husband and children.

The field office director found that the applicant had failed to establish that denial of the waiver application would result in extreme hardship to her U.S. citizen spouse and denied the application accordingly. On appeal counsel contended that the evidence in the record shows that, if the applicant were removed to Albania, her husband would suffer extreme hardship. Although counsel did not appear to contest the field office director's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—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.

In an interview under oath on May 30, 2000, the applicant stated that her mother had gotten her the passport with which she left Albania and came to the United States. On a Form I-589 asylum application, filed on August 20, 2000, the applicant stated that she last entered the United States on May 30, 2002 at New York. A notation placed on that form by an officer of the USCIS indicates that the applicant admitted, at an interview pertinent to her asylum claim, that she entered the United States pursuant to passport fraud. In an affidavit dated December 5, 2005 the applicant admitted that she entered the United States with a passport issued to [redacted]

In a sworn interview before an officer of USCIS on December 18, 2006, the applicant stated that she arrived at JFK airport in New York on May 30, 2000 and presented an Albanian passport bearing the name [redacted] She stated that she did not know whether [redacted] is the name of a real person, and that her mother and uncle obtained the passport for her.

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[1] The record shows that the applicant has two children born in the United States. In a brief submitted on appeal, counsel stated that she now has a third U.S. born child. No individual hardship specific to that child was claimed.

The record contains a photocopy of a Form I-94 Departure Record showing an admission under the name on May 30, 2000.

The AAO finds that, to secure her May 30, 2000 entry into the United States, the applicant knowingly presented the passport of another person, falsely representing herself to be that other person, thereby making a fraudulent misrepresentation to obtain an immigration benefit and committing fraud as contemplated in section 212(a)(6)(C)(i) of the Act. The applicant is inadmissible pursuant to that subsection. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

> The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien . . . .

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application.

In the brief filed with the instant waiver application, counsel asserted that the applicant's mother is a U.S. Lawful Permanent Resident (LPR). The AAO observes that, if this is so, then hardship that would be occasioned to the applicant's mother as a result of the applicant's removal to Albania could also be included in the hardship analysis pertinent to this case. The record, however, contains no evidence that the applicant's mother is an LPR,[2] and hardship to her will not be considered.

The applicant's husband is the only qualifying relative who will be considered in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

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[2] The assertions of counsel are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503 (BIA 1980).

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 nonexclusive list of 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).

In an affidavit dated August 21, 2006 the applicant's husband stated that he had then been with his present employer for almost nine years, and could not support his family if he started anew in Albania. He stated that he does not believe he could even find work there. He stated that his legal fees and the applicant's need for medical care and counseling[3] are consuming his income. He further stated that his older child is anemic and that he requires his employment benefits, including medical insurance, in order to care for the child and the applicant. He stated that he would be unable to secure proper care for them in Albania, but did not state his basis for that assertion. He stated that he does not wish even to visit Albania. He further stated that any of the applicant's family members who return to Albania are in danger of summary execution, but did not state his basis for that belief.

The record contains a Psychological Report from a professional clinical counselor in Columbus, Ohio. The first page of that report is dated June 9, 2006. Individual pages are dated June 16, 2006. The report indicates that both the applicant and her husband were interviewed. Page two of the report states that interviews were conducted on both May 18, 2006 and May 25, 2006, but does not indicate whether both the applicant and her husband were interviewed on both days.

reiterated the applicant's claim of persecution in Albania. She further reported that the applicant's husband stated that the applicant's immigration problems make concentrating on his

[3] As is noted below, the record contains no indication that the applicant is undergoing psychiatric or psychological counseling or treatment, although it was recommended to her.

work difficult and have resulted in him losing sleep. She further reported that he worries that the stress of the situation may cause him to decompensate. She reported that he stated that he previously had a "serious self-destructive pattern of behavior," but did not elaborate.

concluded that the applicant has post traumatic stress disorder and her husband has Depressive Disorder. As to the applicant's husband, she stated,

> [The applicant's husband] does not have all the criteria to be given a diagnosis of Major Depression, but does have a significant amount of depressive symptoms to be considered depressed. He has low energy than normal, blames himself for things, poor appetite, poor sleep, worries most of the time, has lost some interest in normal activities, increased irritability, and feels somewhat hopeless about his future.

[Errors in the original.]

stated that she "found [the applicant's] story of her traumas in Albania to be credible," and that she found the applicant's husband's assertions about depression and self-destructive behavior to be genuine." Again, she provided no description of that self-destructive behavior.

stated that the applicant's mental condition is currently fragile, and news that she is required to leave the United States would cause rapid decompensation. further stated that the applicant mentioned the possibility of suicide rather than allowing her family to be separated. stated that both of the applicant and her husband require stability to maintain their psychological well-being and avoid very serious psychological consequences.

The record contains an undated letter from a medical doctor at the Children's Hospital in Columbus, Ohio. In that letter, stated that for the applicant's children to be separated from their father would be detrimental. He further stated that the younger child has a hemoglobin abnormality which may require long-term follow-up, and two inguinal hernias which will probably require surgical repair. He stated, "We doubt these sort [sic] of specialty services are available in Albania."

The record contains printouts of web content pertinent to conditions in Albania. That web content is from sites maintained by the Democratic Party of Albania, Amnesty International, and the United States Department of State. The web content includes a State Department Consular Information Sheet that states, "Medical facilities and capabilities in Albania are limited beyond rudimentary first aid treatment."

The record contains letters and affidavits from the applicant and from her husband, friends, and relatives. Some of those letters merely reiterate the substance of the applicant's denied application for amnesty. Others are essentially character references. Those letters will not be further addressed.

A letter dated April 19, 2006 from a friend of the applicant states that making her leave her two children would put undue hardship on her husband and children. A letter dated August 11, 2006

from the applicant's sister-in-law states that the applicant's children love her and her absence would be detrimental to them. A letter, also dated August 11, 2006, from the applicant's father-in-law extols the virtues of family life and states that removal of the applicant from the United States would place significant hardship on her husband and children, but did not elaborate.

The record contains the 2003 and 2004 Telefile Tax Records of the applicant's husband. Those records indicate that the applicant's husband had Adjusted Gross Income of $44,594 and $51,064 during those years, respectively.

The record contains a 2005 Form W-2 Wage and Tax Statement showing that the applicant's husband's employer paid him $43,625.54 during that year. The record contains a 2005 W-2 form showing that a Pittsburgh, Pennsylvania company paid wages of $8,296.25 to the applicant during that year. The total of the applicant's W-2 income and her husband's W-2 income is $51,921.79. The record contains the joint 2005 Form 1040A U.S. Individual Income Tax Return confirming that they declared a total of $51,922 in wages during that year.

In a brief that was apparently filed with the instant waiver application, counsel reiterated the applicant's asylum claim. Counsel noted the finding of [redacted] that the applicant's husband suffers from depressive disorder resulting from the fear of the separation of his family, and that serious psychological consequences would result to him if the applicant is removed from the United States.

Counsel conclusorily stated that the applicant "does not have close family members in Albania." Counsel did not enumerate the applicant's relatives in Albania so that the AAO might make an independent assessment of their closeness. Counsel further stated that all of the applicant's husband's relatives live in Columbus, Ohio.

Counsel noted that, if the applicant is removed to Albania, her husband would be obliged to decide whether he and the children would join her there. Counsel noted that country information on Albania states that Albania has a high crime rate. Counsel stated that either dividing the family or deciding that the family should live in such a dangerous area would cause the applicant's husband great hardship.

Counsel stated that because the applicant's husband is unable to speak Albanian and has no employment experience there, he would likely be unable to find employment in Albania. Counsel did not provide any evidence for the proposition that positions for English speakers are generally unavailable in Albania. Counsel further stated that the applicant's husband is responsible for substantial medical bills in the United States, and would be unable to pay those bills if her were in Albania. Counsel stated that the applicant's husband's U.S. financial history would therefore be ruined, and "that would cause further financial implications." Counsel did not detail those further implications.

Counsel stated that the applicant's husband has never lived in a foreign country, and that he would have difficulty, therefore, in adjusting to Albania's culture and living conditions. Counsel also noted

that the applicant's friends and family are all very concerned with the possibility that she may be removed from the United States, and support her application for waiver.

Finally, counsel stated,

> The most significant factor in [this] case is that [the applicant's husband] is well aware of the circumstances surrounding [the applicant's] departure to the United State. He is well aware that [the applicant] is suffering from post dramatic disorder due to the dramatic experiences she had suffered in Albania. Pictures of [the applicant's] cat with his throat cut are definitely the pictures that [the applicant's husband] envisions when he is faced with the fact that his U.S. citizens children, bellowed wife and he would have to relocate to Albania were they all might face the danger that still hunts [the applicant] at nights as described in the Psychologist's report . . . . The [applicant's] family relocation to Albania might be a death sentence to [the applicant's husband, the applicant, their two sons], and their unborn baby. Fear for his life and the lives of the beloved family members are definitely "great actual and prospective injury" to [the applicant's husband], as such fear causes depression which would deteriorate as soon as the relocation to Albania becomes imminent.

[Errors in the original.]

Counsel stated, "Also, [the applicant] would probably commit suicide prior to subjecting her family to fear of danger she experienced in Albania." Counsel added, "While [the applicant's] suicidal thoughts might sound as a speculation, one might only imagine the emotional state of mind of an individual that [sic] had faced life threats similar to what [the applicant] . . . experienced when she fled from Albania[.]"

In a brief filed on appeal, counsel reiterated the assertions and arguments of the previous brief, including the arguments pertinent to the applicant's persecution in Albania. The AAO notes that the applicant filed an Asylum Application based on the applicant's alleged persecution in Albania, but that her claim was found not to be credible. A reiteration of that claim in seeking waiver is of little weight.

In analyzing the potential hardship in this case if the applicant is removed from the United States, three scenarios must be addressed. The applicant might go to Albania with her children but without her husband, the applicant might go to Albania with her husband and children, or the applicant might go to Albania alone. In order to demonstrate that her removal from the United States would result in extreme hardship to her husband, the applicant must demonstrate that he would suffer extreme hardship no matter which option the family selects.

The AAO will first consider the possibility of the applicant going to Albania with her children but without her husband. In that event, the applicant's husband would suffer hardship from his separation from his wife and children. The record contains no evidence, nor even an assertion, that

the applicant would be unable to support herself and her children in Albania, and no assertion that the applicant's husband requires her income to support himself here in the United States.

However, counsel submitted evidence that one of the applicant's children has medical conditions that require, or may require, continued monitoring and treatment, or surgical operations. Counsel submitted evidence that medical care, other than rudimentary first aid, is largely unavailable in Albania. The applicant's husband would certainly suffer if he were unable to provide necessary medical care for his son. Although the record is mute pertinent to the severity of the applicant's son's hernias and anemia, the AAO finds that, if the applicant were removed and her children accompanied her, the medical condition of one of the children would likely cause the applicant's husband hardship which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

The AAO will next consider the hardship that would result if the applicant's husband accompanied the applicant and their children to Albania. In that event, the applicant's husband would not suffer the emotional harm of being separated from his wife and children, but would suffer from his separation from his family members in the United States. He would suffer some additional hardship by being subjected, along with the applicant and their children, to danger from the high crime rate in Albania.

In the event that the applicant's husband accompanied his wife and children to Albania, the hardship that would result to the applicant's husband due to his son's medical conditions would be the same as in the scenario above, where he did not. Although the severity of the child's conditions is not in evidence, the child's doctor has indicated that he will possibly require extended monitoring of his anemia and will likely require surgery for his hernias. The AAO finds that, if the applicant were removed to Albania and her husband and children accompanied her to live there, the applicant's husband would suffer hardship due to his child's medical condition and the insufficiency of medical care available which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

The remaining scenario to consider is that of the applicant being removed to Albania and her husband and children remaining in the United States. Although the loss of any income is a hardship, the only evidence that the applicant ever had any income in the United States is the 2005 W-2 form, mentioned above. During that year she earned somewhat in excess of $8,000. The record contains no argument that the loss of that income will seriously inconvenience the applicant's husband. The record contains neither evidence nor argument to show that the applicant's husband will be unable to pay his medical bills if he remains in the United States.

If the applicant's husband and his children remain in the United States, they will not be subjected to the high crime rate in Albania. Further, as there is no evidence or argument in the record to show that the applicant will be unable to find employment and to be self-supporting in Albania, the record does not indicate that the applicant's husband would be required to remit money to her with which to support herself. Further still, this arrangement should permit the applicant's husband to continue working at this present job, and to retain his health insurance and other benefits, which he stated

were critically important to him. The evidence does not demonstrate that, if the applicant leaves the United States and the applicant's husband and children remain in the United States, the financial hardship the applicant's husband will suffer as a result, when considered with the other hardship factors in this matter, will rise to the level of extreme hardship.

Remaining in the United States with his children but without his wife would put some strain on the applicant's husband, as he would be obliged to raise his children without his wife's presence. Counsel has stated, however, that all of the applicant's husband's family and much of the applicant's family are in Columbus, Ohio, where the applicant's husband now lives, and might continue to live, with the children. No reason was given that the applicant's husband would be unable to obtain assistance from his relatives and the applicant's relatives in caring for the children. The evidence does not demonstrate that, if the applicant is removed from the United States and the applicant's husband and children remain in the United States, the hardship inflicted on the applicant's husband by having to raise the children without the applicant's assistance, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

Although counsel stated that the applicant would "probably" commit suicide rather than separate her family, the AAO notes that none of the evidence in the record supports that asserted probability. **stated, in her report, that the applicant mentioned it as a possibility.** did not, however, discuss the possibility that the applicant would exercise that option. The issue of suicide was not raised in any other evidence in the record.

The remaining hardship factor to be considered is the emotional hardship the applicant's husband would suffer as a result of her removal. stated, in her psychological report, that the applicant's husband previously had a pattern of self-destructive behavior, and that he now has low energy, poor appetite, and difficulty concentrating and sleeping because of his wife's immigration difficulties. She concluded that he has depressive disorder and that the applicant's imminent removal might cause him to decompensate.

Although the input of any mental health professional is respected and valuable, the AAO notes that the conclusions pertinent to the applicant's husband are based on either single interviews or, at the most, two interviews of the applicant and the applicant's husband. **Although** suggested that the applicant's husband would benefit from treatment, the record fails to reflect an ongoing relationship with the applicant's husband or any history of treatment for the disorder he allegedly suffers. Moreover, the conclusions reached in the submitted report, being based on a one or two interviews, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering s findings speculative and diminishing the report's value in determining extreme hardship.

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 husband faces extreme hardship if the applicant is refused admission. Rather, the record suggests that he 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 record demonstrates that the applicant has loving and devoted family members who are concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than 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 failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits 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.