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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090

**U.S. Citizenship  
and Immigration  
Services**

H2

[REDACTED]

FILE: [REDACTED] Office: CLEVELAND, OH

Date: SEP 02 2009

IN RE: Applicant: [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.

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Cleveland, Ohio. An appeal was subsequently dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted, but the appeal will be dismissed. The waiver application will be denied.

The record reflects that 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) 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 seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. §§ 1182(i), in order to remain the United States with her U.S. citizen spouse and U.S. citizen child.

In a decision dated March 20, 2006, the District Director concluded that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. On appeal, the applicant, through counsel, asserted that the denial of the applicant's admission into the United States would result in extreme hardship to her United States citizen spouse. In a decision dated October 15, 2008, the AAO determined that the applicant had demonstrated extreme hardship to her spouse if he were to reside in Albania but not if he were to reside in the United States.

On the present motion, counsel asserts that the AAO's decision was internally inconsistent, as the primary basis for finding extreme hardship should the applicant's spouse move to Albania was his inability to obtain employment to support his wife and child. Counsel observes that, conversely, should the applicant's spouse not leave the United States, the AAO found that his inability to maintain the financial well-being of his wife and child would not result in his extreme hardship.

In support of the applicant's waiver application, the record contains, but is not limited to, country condition reports, an employer letter, earnings statements, W-2 forms, tax returns, bank statements, a statement from the applicant's spouse, a statement from the applicant's mother-in-law, a letter from the applicant's church and a letter from the applicant's child's pediatrician. 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 director found the applicant inadmissible under section 212(a)(6)(C) of the Act for having presented the passport and visa of another person to be admitted to the United States on February 9, 2002. The record supports this finding, and the AAO concurs that this misrepresentation was material. The applicant has not disputed this finding of inadmissibility. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C) of the Act.

Counsel asserts that the hardship on the applicant's spouse should he remain in the United States is strikingly similar to the hardship he would face overseas. Counsel states that should the applicant be removed, the financial hardship on her spouse would increase. Counsel states that without a partner to support their child, the typical household responsibilities previously undertaken by the applicant would now fall upon her spouse. Counsel notes that the AAO observed that the applicant's spouse's income was less than \$20,000, acknowledging his limited financial prospects. Counsel further notes that the AAO recognized that the applicant's spouse's parents lived in Florida and Louisiana, thus acknowledging their inability to care for their granddaughter. Counsel states that the indefinite absence of one parent due to deportation and the other to full-time and overtime employment will undoubtedly and significantly impact the growth of the applicant's daughter. Counsel states that should the applicant's spouse remain in the United States, he would rarely see his daughter. Counsel states that the applicant's spouse would maintain full-time employment and a second job to support his wife overseas in order to provide for her. Counsel states that should the applicant's daughter leave with her the applicant, the applicant's spouse would be deprived of involvement in her upbringing.

The AAO has reviewed the record of proceedings and finds that the evidence of financial hardship to the applicant's spouse should he remain in the United States is not demonstrated by the record. The record contains the applicant's spouse's 2005 Form W-2, Wage and Tax Statement, which reflects that he earned an annual salary of \$19,085.22. The record also contains an undated letter, filed February 10, 2006, from the applicant's spouse's employer, National City, stating that his annual salary is \$21,208. The record reflects that the applicant is unemployed, indicating that her removal would not result in a loss of income to her spouse. The AAO notes that the applicant's annual income of \$21,208 is above the U.S. Department of Health and Human Service's 2006 federal poverty guidelines, which reflect that an annual income of \$16,600 for a family of three constitutes poverty.<sup>1</sup> The AAO notes further that the record does not contain any documentation of the applicant's spouse's household and living expenses, or any other debts and liabilities he may have. The AAO acknowledges that the applicant's removal would result in the need for her spouse to find child care for their daughter. However, the record does not contain any reference to the actual cost of child care near their residence in Lakewood, Ohio. Moreover, there is nothing in the record to support counsel's assertion that the applicant's spouse would have to support the applicant in Albania. The applicant, a native and citizen of Albania, has not indicated that she would be unable to find employment and housing in Albania and rely on her family members in Albania for support. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Similarly,

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<sup>1</sup> <http://aspe.hhs.gov/POVERTY/06poverty.shtml>

without documentary evidence to support a claim, the assertions of counsel will not satisfy an applicant's burden of proof. The unsupported 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). Therefore, the AAO cannot conclude, based on the record, that the applicant's spouse would face financial hardship if he remained in the United States.

The AAO recognizes that the applicant's spouse will suffer emotionally as a result of separation from the applicant. His situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. Rather, the record demonstrates 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 fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. 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. 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 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(i) of the Act. 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(i) of the Act, the burden of establishing that the application merits approval 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, though the applicant's motion to reconsider the AAO's prior decision is granted, the appeal will be dismissed on the grounds that the applicant has failed to demonstrate extreme hardship to her spouse and as required under section 212(i) of the Act.

**ORDER:** The appeal is dismissed. The waiver application is denied.