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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**



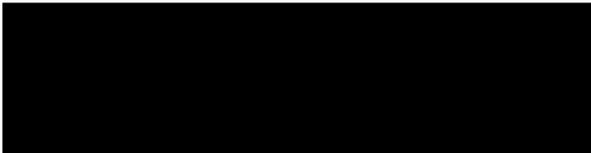
H5

FILE: [REDACTED] Office: VIENNA, AUSTRIA Date: DEC 20 2010

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in cursive script that reads "Michael Shumway".

for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Vienna, Austria and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to obtain a benefit under the Act through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is the son of a U.S. citizen father and Lawful Permanent Resident (LPR) mother. He 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 his family.

The Officer in Charge found that the applicant had failed to establish that the bar to his admission would result in extreme hardship for a qualifying relative or that he merited a favorable exercise of the Attorney General's (now Secretary of Homeland Security's) discretion. The Officer in Charge denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Officer in Charge's Decision*, dated March 7, 2008.

On appeal, counsel contends that the denial of the applicant's waiver application is contrary to law and an abuse of discretion. He asserts that the evidence of record clearly establishes that the hardships the applicant's parents will face if the applicant is refused admission rise to the level of extreme hardship. *Notice of Appeal or Motion*, dated March 31, 2008.

In support of the waiver application, the record includes, but is not limited to, counsel's brief in support of the Form I-601; statements from the applicant, his father, his mother and his siblings; country conditions information on Albania; medical documentation relating to the applicant's mother and father; online articles on cholesterol and bi-polar disorder; a psychological evaluation of the applicant's father, as well as statements regarding his mental health; documentation of the applicant's father insurance coverage; a mortgage note; and an employment letter for the applicant's father. The entire record was reviewed and considered in arriving at a decision in this matter.

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.

The record indicates that in seeking an immigrant visa to the United States, the applicant provided inconsistent accounts of his 2001 travel to the United States prior to crossing the U.S.-Canadian border, and that in an earlier interview at the U.S. Embassy following his April 2006 departure from the United States, the applicant had provided yet another version of this story, indicating that he had entered the United States through a port of entry along the U.S.-Mexican border.

At the time he filed the waiver application, the applicant submitted a statement in which he asserts that his apparently conflicting accounts were the result of a misunderstanding with the U.S. consular officer who interviewed him. He states that he was extremely nervous and could not think of answers to the officer's questions at the time of interview and provides an account of his travel to the United States that incorporates all the elements of his prior statements, specifically that he traveled from his native Albania to Greece, from Greece to Spain, from Spain to Mexico and from Mexico to Canada, where he entered the United States through a U.S. port-of-entry without being asked any questions or having to show any documentation.

Although the record establishes that the applicant provided contradictory accounts of his travel to the United States, the AAO notes that he appears to have consistently testified that he entered the United States through a U.S. port-of-entry. It is not clear from the record whether the applicant at his first visa interview testified that he had actually presented a purchased Greek passport and U.S. visa for inspection at the time of his arrival in the United States, testimony that would conflict with his April 2006 and written statements that, while the Greek passport was in his possession, he remained silent at the port-of-entry and was not asked for any documentation at the time of his admission. No sworn statements taken at the time of the applicant's interviews are found in the record.

The AAO does not, however, find it necessary to reach a determination as to whether the applicant used a fraudulent passport and visa to enter the United States as we note that he is also inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.<sup>1</sup>

Section 212(a)(9)(B) states in pertinent part:

(B) Aliens Unlawfully Present.-

(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.

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<sup>1</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the original decision does not identify all of the grounds for denial. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3<sup>d</sup> Cir. 2004)(noting that the AAO conducts appellate review on a *de novo* basis).

The record indicates that the applicant entered the United States on or about June 6, 2001 and remained until he departed on April 12, 2006 under a grant of voluntary departure. Accordingly, even if the applicant, as he claims, was admitted to the United States as a nonimmigrant in 2001, the period of his lawful admission would have been limited to no more than six months. Therefore, he would have accrued unlawful presence from on or about December 5, 2001, when his nonimmigrant admission would have expired, until December 15, 2005; the date on which the immigration judge granted him voluntary departure from the United States. As the applicant accrued unlawful presence in excess of one year and is seeking to benefit from an immigrant visa within ten years of his April 12, 2006 departure from the United States, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

In that the record establishes the applicant's 212(a)(9)(B)(i)(II) inadmissibility, the AAO will consider his eligibility for a waiver under section 212(a)(9)(B)(v) of the Act rather than section 212(i). We note that the applicant's eligibility for a waiver of his unlawful presence will also waive inadmissibility under section 212(a)(6)(C)(i) of the Act.

With regard to waivers of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, section 212(a)(9)(B)(v) states:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen father and LPR mother are the qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions

in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals (BIA) stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996)

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include 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. *Id.* The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The BIA has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the BIA has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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.” *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the BIA considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the BIA considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of

separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The AAO now turns to the question of whether the applicant in the present case has established that either of his parents would experience extreme hardship as a result of his inadmissibility.

In the brief filed in support of the Form I-601, counsel states that both of the applicant's parents have medical conditions that would result in hardship for them in Albania. He reports that the applicant's father is suffering from moderate obesity and high cholesterol, and is taking two cholesterol reducing medications. The applicant's mother, counsel states, suffers from atypical chest pain, hypertension/hypertensive cardiovascular disease, dyslipidemia, obesity, dizziness and degenerative joint disease. Counsel indicates that she is also taking medication. Counsel asserts that the applicant's parents' medical conditions cannot be adequately treated in Albania as Albanian medical facilities are poorly equipped and prescription medication would not be available. He further asserts that because of their ages, lack of formal training and long-term absence from the workforce in Albania, they would have great difficulty obtaining employment upon relocation. Counsel contends that the only employment available to them would be agricultural work and that the applicant's mother's degenerative joint disease would not allow her to perform agricultural work as it would require bending, squatting and stooping. Counsel further states that the applicant's parents' return to Albania would mean the loss of their home in the United States as they would be unable to continue the mortgage payments. He also contends that a return to Albania would result in the loss of the applicant's mother's permanent residency and, therefore, the abandonment of her dream of becoming a U.S. citizen.

Counsel states that moving back to Albania would also result in emotional hardship for the applicant's parents as they would be leaving behind the three children they have brought to the United States, as well as the applicant's father's three sisters and their families, and his mother's sister. Counsel also notes that the applicant's father has petitioned for his oldest daughter who currently resides in Albania and that she will immigrate to the United States once her visa priority date becomes "current."

Subsequent to the filing of the appeal, counsel provided additional evidence in support of the waiver application, including an August 4, 2008 letter in which he indicates that the applicant's parents traveled to Albania on May 2, 2008 in the hope that the applicant's father would find employment that would allow them to relocate. Counsel reports that the applicant's father's efforts were unsuccessful and, further, that the applicant's mother was unable to find either proper medical care or the medications necessary to treat her osteoarthritis. Counsel also states that the applicant's parents were in constant fear for their safety in the town of Lazarat where the applicant resides.

In support of the preceding assertions, the record contains a June 17, 2008 statement from a Director of the Employment Regional Office in [REDACTED] National Employment Services, Social Affairs and Equal Opportunities in the [REDACTED] that reports the applicant's

father has been, as of May 7, 2008, registered in their records as being unemployed. A second statement indicates that the applicant's father applied for a position at [REDACTED] on May 20, 2008, but was not "prompt" in appearing for his interview, did not meet the requirements and was "relatively old" for the position. A third statement from the Director of the [REDACTED] of the Albanian [REDACTED] reports that the applicant's father applied for a position on May 5, 2008 and was given an interview, but was not hired.

While the AAO acknowledges this documentary evidence, we do not find it to establish that the applicant's father would be unable to obtain employment in Albania. Although counsel asserts that the applicant's father did not attend school beyond the seventh grade, the AAO notes that the psychiatrist who interviewed the applicant's father on May 27, 2009 indicates that he was informed that the applicant's father has a college education. Accordingly, the AAO does not find the record to establish that the applicant's father would be limited to agricultural labor as a result of his limited education. We also find the two statements from [REDACTED] and the Gjirokaster Branch of the Albanian [REDACTED] to offer insufficient proof of the applicant's inability to obtain a job in Albania. Neither states that the applicant's father did not have the education required for the position. Moreover, one of the statements indicates that among the reasons the applicant's father was not hired was that he did not appear on time for his employment interview.

In support of counsel's claims regarding the applicant's parents' health problems and the lack of adequate health care in Albania, the record contains a range of documentary evidence. A statement from [REDACTED] Primary Care Center, Dearborn Heights, Michigan and medical reports from [REDACTED] Physical Medicine & Rehabilitation, Warren, Michigan establish that the applicant's mother is suffering from hypertension, hyperlipidemia and degenerative joint disease and that she has been prescribed Norvasc, Diovan, Lipitor and Celebrex. A July 26, 2007 from [REDACTED] Midwest Cardiology Associates, Garden City, Michigan reports that the applicant's mother has also been evaluated for atypical chest pain. The record further includes statements from [REDACTED] regarding the applicant's father that establish he has hyperlipidemia, moderate obesity and several risk factors for coronary artery disease. [REDACTED] states that he has prescribed Vytorin for the applicant's father and that it is important that he continue to come in for treatment and to take his medication. Medical statements, dated May 27, 2008 and July 11, 2008, from [REDACTED] a physician practicing at the [REDACTED] Regional Hospital in Gjirokaster, Albania report that the applicant's mother is on medication for "Osteoarthritis Gene Bilateral" with advanced joint pain, walking difficulties and wrist swelling. [REDACTED] states that the applicant's mother will need to be treated overseas in connection with possible surgery and that some of the medication she requires is not available.

The record also includes the Department of State's "Country Specific Information" on Albania, issued June 10, 2008, which reports that medical facilities and capabilities in Albania are limited beyond rudimentary first aid; emergency and major medical care requiring surgery and hospital care is inadequate as a result of the lack of specialists, diagnostic aids, medical supplies and prescription drugs; and that prescription drugs may be unavailable locally. This same "Country Specific Information" notes that the U.S. Government requires its employees to travel in secure

vehicles with an escort when visiting Lazarat. The record also contains translated internet articles on Lazarat documenting the pervasive crime and drug activity that exists there.

When the applicant's parents' ages, their medical conditions, their ties to the United States and conditions in Albania, including those in Lazarat, are considered in the aggregate, the AAO finds the applicant to have established that a return to Albania would result in extreme hardship for both his mother and father.

Counsel also contends that the applicant's parents would experience extreme hardship if they remained in the United States without the applicant. He asserts that the applicant's father is employed as a crew leader on the assembly line at [REDACTED] a direct mail company, where he earns \$407.20 a week and that he is the sole provider for himself and his wife. On the applicant's father's limited income, counsel states, it would be impossible for him and his wife to see the applicant on regular basis. Counsel also asserts that both the applicant's mother and father have been emotionally distraught since the applicant's departure from the United States.

With the filing of the Form I-601, counsel submitted an undated statement from the applicant's father who asserts that, of all his children, the applicant has been the child who has helped him and his wife. He states that he and the applicant worked very hard to save money to buy the family home and that they chose the applicant to live with them so that they would have someone to care for them in their later years. He states that the applicant is willing to do whatever it takes to help them and that is the main reason that he bought the house with the applicant rather than any of his other children. The applicant's father also asserts that it has been almost impossible for him to have a normal life without the applicant and that he is required to pay all the household bills by himself, including the mortgage; the water, gas, and electricity bills, property taxes and the bills relating to his and his wife's expenses. The applicant's siblings cannot be of help, the applicant's father contends, because they are going to college and barely earn enough to pay for their own expenses. The applicant's father also states that the applicant helped him and his wife in many ways, including taking him to his doctor's appointments as he does not speak English. He further states that his separation from the applicant has affected him mentally and physically.

In a separate statement, the applicant's mother asserts that she has health issues and is dependent on regular, expert medical care. She states that she suffers from bilateral knee osteoarthritis and that her doctor has recommended physical therapy, which she has not begun because she needs someone who speaks English to accompany her. The applicant's mother states that she was previously able to depend on the applicant whenever she had to go anywhere that required someone to drive or to speak English. She contends that she cannot depend on her husband or her oldest son to help her as neither of them speak English and that her other children are in school and are busy with their school work and jobs. The applicant's mother states that, without the applicant, it will be hard for her to live a good life.

The record contains an employment letter for the applicant's father than demonstrates he is employed by [REDACTED] works a 40-hour week and is paid \$10.18 per hour. The record also

includes a 2004 mortgage note that is co-signed by the applicant and establishes the applicant's father's mortgage payment as \$543.26 per month. No other documentation is included in the record to demonstrate the applicant's father's other financial commitments. Neither does the record document the amount of the applicant's financial contribution to his parents' household prior to his 2006 departure. The AAO also notes that the record fails to demonstrate that the applicant's other children are unable to assist their parents' financially. Although the applicant's parents' claim that their two youngest children are in college, the AAO notes that both children are adults and that the record fails to provide evidence that they are enrolled in any school. There is also no indication that the applicant's older brother is unable or unwilling to financially assist his parents in the applicant's absence.

The record further fails to establish that the applicant's parents' physical health has been compromised as a result of the applicant's absence. The AAO notes that the medical statements from the applicant's parents' healthcare providers, all of which are dated after the applicant's April 2006 departure from the United States, indicate that they continue to treat the applicant's parents. [REDACTED] reports that the applicant's father has been accompanied to his appointments by his son; he indicates that the applicant's mother is being accompanied to her appointments by a translator. [REDACTED] also states that the applicant's mother is accompanied to her appointments by a translator.

To establish that the applicant's father is suffering emotional hardship as a result of his inadmissibility, counsel has submitted an August 2007 psychological evaluation prepared by licensed psychologist [REDACTED] who indicates that the applicant's U.S. citizen brother served as his father's translator. [REDACTED] reports that he conducted a clinical interview of the applicant's father and administered the Center for Epidemiologic Studies Depression Scale and the Depression and Anxiety Stress Scales. He finds the applicant's father to meet the criteria for Major Depressive Disorder, Single Episode, Moderate, as he is experiencing middle insomnia, irritability, and sadness and depression a majority of the time. These symptoms, [REDACTED] states, affect the applicant's father at home and at work. [REDACTED] concludes that the applicant's father's mental state is the direct result of his separation from the applicant.

Further evidence of the applicant's father's emotional hardship is found in an April 13, 2010 letter from counsel requesting expedited consideration of the applicant's case based on the deteriorating mental health of his father. Accompanying counsel's letter are statements from the applicant's mother, his U.S. Citizen brother and his lawful permanent resident sister, all of whom indicate that they are concerned about the applicant's father growing depression. Counsel also submits statements from a psychiatrist and a licensed professional counselor who have recently treated the applicant's father.

In a November 6, 2009 statement, psychiatrist [REDACTED] reports that he saw the applicant's father for a psychiatric evaluation on May 27, 2009 following his referral by [REDACTED]. [REDACTED] indicates that [REDACTED] referral was based on the applicant's father's increasingly disturbed behavior, including episodes of rage that had frightened his family. He

reports that at the time of his initial evaluation, he diagnosed the applicant's father with major depression, single episode, severe and extended grief reaction, and prescribed the anti-depressants Lexapro and Abilify. By the time of his next visit, [REDACTED] states, the applicant's father had made some progress, but his anger and emotional problems remained. Accordingly, his medications were increased and he was referred to a therapist. [REDACTED] reports that during the applicant's father's two most recent visits, he found him to have remained essentially the same as a result of sleep disturbances and that he, therefore, changed the applicant's father's prescription for Abilify to Seroquel to help him sleep through the night. [REDACTED] concludes that while the applicant's father's medications are helpful, he does not believe that the applicant's father's condition will resolve as long as he and the applicant are separated.

A February 1, 2010 statement from [REDACTED] a licensed professional counselor, indicates that he is the therapist to whom [REDACTED] referred the applicant's father and that he treated him with psychotherapy from November 2, 2009 until November 16, 2009. While [REDACTED] notes [REDACTED] diagnosis of major depression single episode, severe with extended grief reaction, he also indicates that he found the applicant's father to exhibit features of Bipolar II Disorder, as reflected in the hypomania symptoms of irritability, distractibility, racing thoughts and sleep disturbances. [REDACTED] also concludes that the separation of the applicant and his father is a major factor in the applicant's father's stress levels in spite of medication and psychotherapy.

Based on the evidence of record, the AAO does not find the applicant to have demonstrated that his parents will suffer economic hardship if he is not admitted to the United States. Neither do we find sufficient proof to demonstrate that the applicant's parents are dependent on the applicant in order to maintain their physical health. However, the AAO takes note of the significant and sustained negative impacts that separation from the applicant has had on his father's emotional/mental health and concludes that when the applicant's father's deteriorated mental state and the normal hardships created by the separation of a family are considered in the aggregate, the applicant has established that his father would experience extreme hardship if his waiver application is denied.

As the record demonstrates that the applicant's father would experience extreme hardship whether he relocates to Albania or remains in the United States, the applicant has satisfied the statutory requirements for a waiver under section 212(a)(9)(B)(v) of the Act. The AAO additionally finds that he merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal

record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's unlawful presence and unauthorized employment in the United States, as well as the contradictory accounts of his travel to the United States that led a Department of State consular officer to find him inadmissible under section 212(a)(6)(C)(i) of the Act. The favorable factors in the present case are the applicant's U.S. citizen father, his LPR mother, and his U.S. citizen and LPR siblings; the extreme hardship that his father would experience if his waiver application is denied; his compliance with the December 15, 2005 order of voluntary departure issued by an immigration judge; and his attributes as a good son and brother, as indicated by the statements from his parents and siblings.

The immigration violation committed by the applicant was serious in nature and cannot be condoned. Nevertheless, when taken together, the AAO finds the favorable factors in the present case to outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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 met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.