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U.S. Citizenship  
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HS

FILE: [REDACTED] Office: CHICAGO, IL Date: MAR 05 2010

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 PETITIONER:

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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Albania who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having sought admission to the United States through fraud or misrepresentation of a material fact. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. 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 in the United States and reside with her spouse and daughter.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated July 20, 2007.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (“USCIS”) failed to properly analyze the applicant’s claim that she was not inadmissible and erroneously concluded that the applicant knowingly committed fraud to obtain a student visa. *See Counsel’s Memorandum of Law in Support of Appeal* at 1. Counsel further asserts that the applicant’s husband and her U.S. Citizen parents would suffer extreme hardship if the applicant were denied admission to the United States. Specifically, counsel contends that the applicant’s husband has resided in the United States since 2000, when he was twenty years old, and would suffer hardship if he relocated to Albania due to loss of his employment and career in the United States and poor economic conditions in Albania. *Memorandum of Law* at 10-12. Counsel additionally states that conditions in Albania and lack of access to adequate medical care would result in hardship to the applicant’s husband, as would the emotional effects on him of hardship to their daughter if the family relocated there. *Memorandum of Law* at 13-17. Counsel further contends that the applicant’s parents would suffer extreme emotional hardship if the applicant were removed from the United States because they would be separated from their daughter, son-in-law, and only grandchild, whom they see on a daily basis. *Memorandum of Law* at 26. Counsel further asserts that they would suffer hardship if they relocated to Albania due to their medical conditions and lack of access to adequate medical care and poor economic and social conditions there. *Memorandum of Law* at 26-27.

In support of the waiver application and appeal, counsel submitted the following documentation: Affidavits from the applicant and her husband; copies of passports or permanent resident cards for the applicant’s daughter, parents, mother-in-law, and father-in-law; documentation of medical insurance provided by the applicant’s husband’s employer; copies of family photographs; affidavits from the applicant’s parents and from friends and other relatives; a psychological evaluation of the applicant’s husband; documentation related to the applicant’s education and employment in the United States; medical records for the applicant’s husband and his parents; and information on conditions in Albania. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(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:

(1) The [Secretary] may, in the discretion of the [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 [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.

Counsel asserts that USCIS erred in determining that the applicant had obtained her student visa by fraud and that she concealed her intent to obtain permanent residence in the United States when applying for the visa. Counsel asserts that the applicant was unaware that the Form I-20 she submitted was fraudulent and contends that it was obtained by a notary in Albania without her knowledge of the fraud. Counsel further states that the applicant intended to study at the University of Minnesota when she was admitted to the United States and decided not to only after she arrived in the United States and learned that she could not work while she was studying. In her affidavit, the applicant states that because her English was limited, she went to a notary to prepare her visa application and she believed that he completed all the forms for her to apply to the University of Minnesota. *Affidavit of* [REDACTED] dated September 29, 2006. She states that she never received any documentation from the university because all documentation was sent to the notary, and she had no reason to suspect that the Form I-20 she submitted was fraudulent. She further states,

It is true that my husband, [REDACTED], was living in Chicago when I applied for a student visa. . . . However, I have also always been determined to get a good education . . . . So when I first came to the United States I was determined to go to school because I wanted to receive a college degree. Unfortunately, things did not go the way that I had planned. [REDACTED] and I had assumed that I would be able to work while attending school. I don't recall ever being told otherwise. . . . When I was unable to obtain a social security number which would allow me to work, [REDACTED] and I decided we needed to wait for me to attend school and save enough money for tuition. *Affidavit of* [REDACTED] dated September 29, 2006.

Counsel asserts that there is no direct evidence that the applicant knew the Form I-20 submitted by the applicant was fraudulently obtained and that her explanation that she relied on the notary to fill

out the paperwork was credible. The AAO notes that in applying for adjustment of status, the burden of proving that she is admissible remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant states that she relied on a notary to select the university where she would study and prepare and receive all of the paperwork related to her future studies, and further states that she assumed she could work to pay her tuition once she arrived in the United States because she was never told anything to the contrary. This explanation is unpersuasive, particularly in light of the fact that the applicant's husband was already studying in the United States and would therefore be more familiar with the application process. Further, the applicant would have been required to submit financial documentation establishing how she would finance her studies in order to obtain the visa, which undermines her claim that she believed she could work to pay for her studies and did not consider how she would pay her tuition until after she arrived in the United States.

Even if the applicant were found to have established that she was unaware the Form I-20 she submitted was fraudulent, the AAO notes that she misrepresented her marital status and her intent to seek employment in the United States on her nonimmigrant visa application, Form DS-156, which was completed in Albanian and signed by the applicant. On the form she listed her civil status as unmarried and stated that she had no relatives in the United States, although her husband was a lawful permanent resident residing in Chicago, Illinois at the time. Further, the applicant states that she intended to work to finance her studies and decided not to study only after arriving in the United States and learning that she would not obtain work authorization. This claim is undermined by the fact that the applicant stated that she did not intend to work in the United States on her visa application.

A misrepresentation made in connection with an application for a visa or other immigration benefit or when seeking admission to the United States is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 447 (BIA 1960; AG 1961).

Based on this standard, the applicant's misrepresentation was material. The applicant misrepresented her marital status, her husband's status in the United States, and her intent to work when applying for a nonimmigrant visa. When the applicant misrepresented these facts, she shut off a line of inquiry concerning whether her true intent in seeking a visa was to permanently remain in the United States with her lawful permanent resident husband. Had the applicant revealed her true marital status and the fact that her husband was a lawful permanent resident of the United States, she might well have been found to have intent to remain permanently in the United States and therefore ineligible for a nonimmigrant visa. Based on the foregoing, counsel's assertions that the applicant did not commit fraud or willfully misrepresent material facts when applying for a student visa are not persuasive. The applicant has not established that she was erroneously deemed inadmissible.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 that the record contains several references to the hardship that the applicant's child would suffer if she relocated to Albania with her mother. Section 212(i) of the Act provides that a waiver of section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse and parents are the only qualifying relatives, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's qualifying relatives.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court 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. In *Hassan v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a thirty year-old native and citizen of Albania who has resided in the United States since February 5, 2002, when she was admitted as an F-1 student. She married her husband, a twenty-nine year-old native of Albania and citizen of the United States, on

August 20, 2001. The applicant currently resides in [REDACTED] with her husband and daughter. Several members of their extended family, including her parents, live nearby.

Counsel asserts that the applicant's husband would suffer extreme hardship if he were to relocate to Albania with the applicant due to poor conditions in Albania and his extensive family and community ties to the United States, where he has resided since he was twenty years old and works as an engineer. In support of these assertions counsel submitted affidavits from the applicant's husband's parents, who are lawful permanent residents, and information on his employment and studies. The applicant's husband states that he worked hard to put himself through community college and university and become an engineer and is "extremely saddened" that after all of these sacrifices he may have to return to Albania, where he would be unable to continue pursuing a Master's Degree in engineering because there is no such program in the country. *Affidavit of* [REDACTED] [REDACTED] dated September 29, 2006. He states that he would be unable to use his education and work experience as an engineer in Albania and his education would be "practically useless" there. He further states that his health would be affected because he has chronic sinusitis, which has required two surgeries and ongoing care, because of lack of access to adequate medical care in Albania.

Documentation on the record states that Albania is one of the poorest countries in Europe, with 30% of the population living below the poverty line and two-thirds of all workers employed in the agricultural sector. Other serious problems cited in news reports and documents from the U.S. State Department, the World Bank, and other organizations include widespread corruption and human rights violations, air pollution, and fatal toxins in the environment. According to a Consular Information Sheet issued by the U.S. Department of State, medical facilities in Albania are incapable of providing more than "rudimentary first aid treatment" and emergency and major medical care are inadequate due to lack of specialists, supplies, and prescription drugs.

The applicant's husband, who has resided in the United States for ten years, is pursuing a graduate degree in engineering, is employed in his field, and has strong family and community ties in the United States and few ties in Albania, would suffer financial and emotional hardship if he relocated there. These hardships, when considered in the aggregate and in light of poor economic conditions and lack of access to adequate medical care in Albania, would rise to the level of extreme hardship if he were to relocate to Albania.

Counsel asserts that if the applicant were removed and her husband remained in the United States, he would suffer emotional and psychological hardship due to being separated from her and their daughter, who would relocate to Albania with the applicant. *Brief in Support of Appeal* at 6. The applicant's husband states that now that they have a child, he "can't imagine leaving [them] and not being there to help and protect both of them in Albania, a much more dangerous, unsafe, and corrupt country." A letter from a friend who has known the applicant and her husband since they met in high school in Albania states,

[REDACTED] would be devastated if [REDACTED] had to return to Albania. Every time [REDACTED] and I speak with him he is on the verge of tears when speaking about the possibility that

he might be separated from his wife and daughter. *Affidavit of* [REDACTED] dated September 27, 2006.

Another friend from Albania states that it would be devastating for the applicant's husband if she returned to Albania, and he would "feel emotionally drained because he would be separated from his best friend, his wife and his newborn child, [REDACTED] *Affidavit of* [REDACTED] dated September 27, 2006. The affidavit further states, "With the political and social instability in Albania as well as the **high crime rate I know** [REDACTED] would be deeply worried about his family's security and well being." *Affidavit of* [REDACTED]

Counsel submitted a psychological evaluation of the applicant's husband conducted by [REDACTED] [REDACTED] on August 28, 2006. The evaluation indicates that the applicant's husband states that he would accompany the applicant and their daughter if she had to leave the United States and would not be separated from them. It provides an overview of his education and work history in the United States and well as the history of his life with the applicant, whom he met when they were fourteen years old. The evaluation further discusses the potential effects on the applicant of separation from her mother and having to return to Albania and the importance of a calm, peaceful home life to allow her to bond with her new baby. *Evaluation by* [REDACTED] dated September 25, 2006. **The evaluation concludes that the applicant's husband is at risk of developing a reactive depression due to "loss of his career and other cumulative losses entailed in giving up family life in the U.S.," including loss of relationships with friends and colleagues and "loss of the occupational role for which he was trained."** *Evaluation by* [REDACTED]

The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on a clinical interview of the applicant's spouse, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any diagnosis of or history of treatment for depression or any other condition. The conclusions reached in the submitted evaluation, being based on one interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist. This renders the psychologist's findings speculative and diminishes the evaluation's value to a determination of extreme hardship. Further, the evaluation discusses in detail the potential effects of relocating to Albania on the applicant's husband and includes an assessment of conditions there as reported by the applicant and her husband. It does not address the potential emotional and psychological effects of remaining in the United States without the applicant on her husband.

The evidence on the record is insufficient to establish that any emotional difficulties the applicant's husband would experience if he is separated from the applicant are more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's deportation or exclusion. Although the depth of his distress caused by the prospect of being separated from his wife is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon

deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 exists.

Counsel asserts that the applicant’s parents would suffer extreme hardship if the applicant were removed and they remained in the United States because they would be devastated as a result of separation from their daughter, son-in-law, and granddaughter. *Memorandum in Support of Appeal* at 26. Counsel further states that they would be forced to make the impossible decision between “remaining in the U.S. for the last portion of their lives or returning to Albania to insure that they remain a part of their only daughter and granddaughter’s lives.” *Id.* Counsel additionally asserts that the applicant’s father suffers from medical conditions, including diabetes and hypertension and has a history of strokes, and her mother suffers from sciatica and has high cholesterol. *Memorandum* at 26. Counsel further states that they “enjoy remarkably better healthcare in the U.S. than they did in Albania.”

Counsel asserts that the applicant’s parents suffer from various medical conditions and are receiving treatment in the United States, but no medical evidence was submitted to support these assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the 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). Further, counsel states that the applicant’s parents would be devastated if they were separated from the applicant, but no evidence concerning their mental health or the potential effects of the separation was submitted. As noted above, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 exists.

Based on the evidence on the record, the applicant has not established that any emotional or physical hardship to her parents if she is removed or to her husband if he remains in the United States without her would be other than the type of hardship that family members would normally suffer as a result of removal or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (defining “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, 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 extreme hardship to her U.S. citizen spouse or parents as required under section 212(i) of the Act.

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. 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.