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**U.S. Department of Homeland Security**  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



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



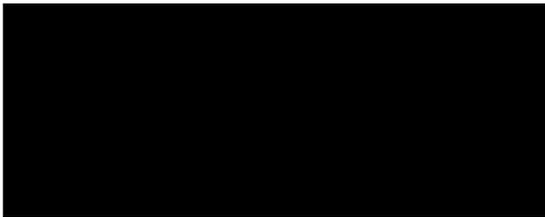
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FILE: [REDACTED] Office: VIENNA, AUSTRIA Date: FEB 28 2011

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:



**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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

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

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 attempting to procure entry into the United States through fraud or the willful misrepresentation of a material fact, to wit; the applicant presented a fraudulent Danish passport bearing his name to a United States Immigration Officer and requested admission to the United States. The record indicates that the applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen wife and son.

The Officer-in-Charge (OIC) found that the applicant had failed to establish that extreme hardship would be imposed to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Officer-in-Charge*, dated September 15, 2008.

On appeal, the applicant through counsel asserts that the applicant's family will suffer extreme emotional and financial hardship if the applicant's waiver request is denied. See *Form I-290B*, dated October 14, 2008, and the accompanying brief in support of the appeal.

The record includes, but is not limited to, counsel's brief in support of the appeal, statements from the applicant's spouse, copies of medical records for the applicant's son, [REDACTED] supportive letters from family and friends, copies of financial, bank and tax documentation, and copies of country condition reports on Albania. The entire record was reviewed and considered in rendering this decision on the appeal.

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 [Secretary], 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

resident spouse or parent of such an alien....

Section 212(a)(9) of the Act provides 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.

. . . .

(v) Waiver

The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 to the satisfaction of the [Secretary] 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.

In the present case, the record reflects that on August 25, 2003, the applicant attempted to procure entry into the United States under the Visa Waiver Pilot Program by presenting a fraudulent Danish passport. The applicant was refused entry into the United States, was detained and issued a referral to an Immigration Judge for removal proceedings. The applicant was subsequently paroled into the United States on September 25, 2005. The applicant filed a Request for Asylum in the United States, which he subsequently withdrew because on June 24, 2004, his United States citizen spouse filed a Petition for Alien Relative (Form I-130) on his behalf. On the same date, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On December 12, 2005, the Form I-130 was approved. On February 28, 2006, the applicant voluntarily departed the United States to Albania. The applicant filed an application for an immigrant visa at the United States Embassy in Vienna, Austria. On June 1, 2007, a Consular Officer found the applicant inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. The applicant filed a Form I-601 waiver. On September 15, 2008, the Officer-in-Charge denied the Form I-601, finding that the applicant failed to demonstrate extreme hardship to a qualifying relative. The AAO notes that the applicant does not dispute that he is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

A waiver of inadmissibility under section (212)(i) 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 or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 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 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 Board 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 Board 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 Board 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 Board 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 Board 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.

In this case, the record reflects that the applicant’s spouse [REDACTED] is a 30-year-old native of Albania, and a citizen of the United States. The applicant and his wife were married in Detroit, Michigan, on April 30, 2004 and they have one child. [REDACTED] states she is suffering extreme emotional and financial hardship as a result of family separation and the denial of the applicant’s waiver request.

Regarding the emotional and financial hardship of separation, [REDACTED] states that “[the applicant’s] departure and the ability to return to the United States has affected us very much psychologically to the point that I started getting sick. I started having hives and outbreaks all over my body and I had to see a family doctor and take medication to control it. . . I had no desire to complete anything and I struggled with falling asleep from fear. . . I currently see [a licensed psychologist] every other week to help deal with the stress of separation, financial stress, the stress of raising [REDACTED] without his father and the stress of feeling dependent upon my parents.” *See Statement from [REDACTED]* dated February 15, 2008. As to the financial hardship of separation, [REDACTED] states that after the applicant left for Albania, she moved in with her parents in order to save money, that she cannot afford daycare for [REDACTED], so her parents help take care of [REDACTED] while she is at work, however, she cannot permanently rely on her parents. [REDACTED] also states that she, the applicant and her brother purchased a cleaning franchise, and that if the applicant is not allowed to return to the United States, they will lose the money they invested in the business, which will lead to greater financial hardship for her, she will continue to struggle financially without the applicant’s income, and she will not be able to visit the applicant in Albania due to health and lack of money. *Id.*

The record contains financial documents relating to [REDACTED], addressed to [REDACTED] mother, dated December 26, 2007, a copy of a Certificate-Conducting Business Under an Assumed Name, issued to [REDACTED] and her brother by the State of Michigan, copies of [REDACTED] Earnings Statements, a

copy of a letter from [REDACTED] dated December 2, 2007, stating that [REDACTED] is a patient in their office, that she is suffering from stress related urticaria and anxiety, and has been given a prescription for a medication to control her hives and has been referred to a therapist for counseling, and a copy a prescription for Allegra and Drysol. The record also contains letters from [REDACTED] family and friends in support of [REDACTED] claim of hardship as a result of family separation.

While the AAO acknowledges that separation from the applicant may cause some difficulties for his spouse, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the applicant's spouse, considered cumulatively, meet the extreme hardship standard. While the emotional hardship of separation is apparent from [REDACTED] statements, the applicant did not provide medical records, detailed testimony, or other evidence to show that the emotional hardships she faces are unusual or beyond what would be expected upon family separation due to one member's inadmissibility. While [REDACTED] claims financial hardship as a result of separation, the record does not contain documentation regarding the applicant's family income and expenses. There is no evidence to show that the applicant had contributed financially to his family and the amount of his contribution. Also, the applicant has provided no evidence of his living conditions in Albania and that he is unable to make financial contributions to his family from a location outside the United States. Additionally, there is no evidence that the applicant's family derives income from the Jani King business. Given the lack of information about the family's finances, the AAO cannot conclude that family separation has caused extreme financial hardship to [REDACTED]. Accordingly, the applicant has failed to establish that his spouse will suffer extreme hardship if she remains in the United States.

Regarding relocation, [REDACTED] states that she was 15 years old when she moved to the United States with her parents, she completed her high school and college education in the United States, she is used to the American culture, and it will be extremely difficult for her to relocate to Albania, and adjust to life over there after a prolonged period of absence from the country. The applicant is concerned that she will not be able to secure employment, and she is very concerned that her son, [REDACTED] will have problems adjusting to life in Albania because of the poor education and health care system in the country. The applicant stated that in 2005, she took her son to Albania to visit the applicant and his family, and while they were there her son became very sick and she took him to the clinic but they were unable to diagnose him properly or provide any treatment, so she had to cut her stay short and rush her son back to the United States for treatment.

The record reflects that [REDACTED] has family ties in the United States, and she is close to her family, she has long-term employment in the United States and a significant period of time has elapsed since she last lived in Albania. The record contains copies of [REDACTED]'s medical record and letters from his treating physicians, confirming [REDACTED] statement about [REDACTED] illness in Albania. The record also contains country condition reports on Albania, showing the difficulties of obtaining medical care in the country. The evidence in the record shows that if [REDACTED] were to relocate to Albania, she will be giving up her family support and employment in the United States, she will be moving to an unfamiliar country and she will be concerned about her son's health and well-being at all times while living in Albania, which in turn will result in hardship to her. Thus, the evidence in the record

demonstrates that the applicant's spouse would suffer hardship if she were to relocate to Albania to live with the applicant.

However, although the applicant has established that his spouse would suffer hardship if forced to relocate to Albania, the record does not support a finding that the difficulties, faced by the applicant's spouse when considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to his spouse, as required for a waiver of inadmissibility under section 212(i) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.