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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF H-C-

DATE: DEC. 16, 2015

APPEAL OF NEWARK FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Albania, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Field Office Director, Newark Field Office, denied the application. The matter is now before us on appeal. The appeal will be sustained.

On April 2, 2015, the Director determined that the Applicant was inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry into the United States by fraud or willful misrepresentation. The Director concluded that the Applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The Form I-601 was denied accordingly.

On appeal, the Applicant submits a brief, duplicate copies of items previously submitted, a letter from his spouse, financial and business documentation, a birth certificate for the Applicant's second child, and medical documentation establishing that the Applicant's spouse is due to give birth to her third child in [REDACTED]. The entire record was reviewed and considered in rendering this decision.

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

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.

....

(iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

(1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 . . . .

With respect to the Director's finding of inadmissibility, the record establishes that the Applicant entered the United States on October 18, 2002, with a fraudulent passport. The Applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility in order to remain in the United States with his U.S. citizen spouse and children.

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. The record establishes that the Applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the Applicant, the Applicant's children, or the Applicant's spouse's extended family members can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, then the Applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists "only in cases of great actual and prospective injury. . . [,] and while an analysis of a given application includes a review of all claims put forth in light of the facts and circumstances of a case, such analysis does not extend to discovery of undisclosed negative impacts." *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). The common consequences of removal or refusal of admission, which include "economic detriment . . . [,] loss of current employment, the inability to maintain one's standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment" are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); *see also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (separation of family members and financial difficulties alone do not establish extreme hardship). Nevertheless, all "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

The Applicant's U.S. citizen spouse contends that she would experience financial and emotional hardship were she to remain in the United States while the Applicant relocates abroad due to his inadmissibility. The Applicant's spouse maintains that she is completely financially dependent on the Applicant. She states that she has not worked since their marriage in 2011, but instead has been the primary caretaker of the couple's children. She asserts that, because of her inexperience and ongoing caretaking responsibilities, she would not be able to find employment sufficient to support herself and their children. The Applicant's spouse also contends that she would experience debilitating emotional stress were she to be separated from the Applicant. In her letters of support,

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she describes severe stress and emotional instability exacerbated by her pregnancies, caregiving responsibilities, and the possibility of the Applicant's departure from the United States. She also describes their son's worsening emotional and behavioral struggles due to the family's stress and uncertainty, which she claims causes her further emotional suffering. She contends that their growing family increases the severity of the economic and psychological impact she would suffer from being the sole caregiver and breadwinner for her and her children.

The documentation in the record establishes that the Applicant's spouse has been diagnosed with severe Post-Traumatic Stress Disorder related to the Applicant's unresolved immigration status. The documentation further establishes that, due to their financial, emotional, and domestic dependence on the Applicant, both she and the couple's oldest son, born in [REDACTED] would suffer trauma and anxiety if separated from the Applicant. The record also establishes that since the Applicant's waiver application was denied, the Applicant and his spouse have had a second child, born in [REDACTED] and, at the filing of the instant appeal, the Applicant's spouse was expecting a third child, due to be born in [REDACTED]. The financial documentation submitted establishes that the Applicant is gainfully employed and is the sole financial provider for the family. Based on a totality of the circumstances, we find that the Applicant has established that his spouse would experience extreme hardship were she to remain in the United States while the Applicant relocates abroad due to his inadmissibility.

In regard to his spouse's relocating abroad to reside with the Applicant, the Applicant asserts that his spouse has never lived outside of the United States, that her entire family lives in the United States, and that she and their children are attached to her parents and relatives. He also asserts that his spouse's parents would suffer emotional hardship were she and the children to move to Albania, thereby causing his wife hardship. In her letter of support, the Applicant's spouse reiterates her emotional ties to her family here in the United States and the consequent hardship she and her children would experience if she moved abroad. The record also contains other letters of support affirming her close ties to her family and community in the United States. The Applicant's spouse also states that she would be adversely impacted by the limited economic prospects for her family in Albania and by the poorer educational opportunities available to her children there.

The record establishes that the Applicant's spouse was born and raised in the United States and has extensive family ties in the United States, including her parents. She has no ties to Albania. She is unfamiliar with the country, culture, and customs. We further note that the U.S. Department of State confirms that the problematic economy in Albania, including high unemployment, encourages criminal activity. Based on the totality of the circumstances, we find that the Applicant had established that his spouse would experience extreme hardship were she to relocate abroad to reside with the Applicant as a result of his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the Applicant has established that his U.S. citizen spouse would suffer extreme hardship were the Applicant unable to reside in the United States. We now turn to a consideration of whether the Applicant merits a waiver of inadmissibility as a matter of discretion. The burden is on the

Applicant to establish that a waiver of inadmissibility is warranted in the exercise of discretion. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 299 (BIA 1996). We must “balance 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). In evaluating whether to favorably exercise discretion,

[T]he 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, recency 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).

*Id.* at 301 (citations omitted). We must also consider “[t]he underlying significance of the adverse and favorable factors.” *Id.* at 302. For example, we assess the “quality” of relationships to family, and “the equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of [removal] proceedings, with knowledge that the alien might be [removed].” *Id.* (citation omitted).

The favorable factors in this matter include the extreme hardship the Applicant’s U.S. citizen spouse and children would face if the Applicant were to relocate to Albania, regardless of whether they accompanied the Applicant or stayed in the United States; gainful employment in the United States; letters of support for the Applicant from community and business associates; business and property ownership in the United States; the Applicant’s payment of taxes; expressed remorse for procuring entry to the United States by fraud or willful misrepresentation; and his community ties. The adverse factors in this matter are the Applicant’s entry to the United States by fraud or willful misrepresentation and periods of unlawful presence and employment while in the United States. Although the Applicant’s immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors, and a favorable exercise of discretion is warranted.

The burden of establishing eligibility for the waiver rests entirely with the Applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the Applicant has met his burden.

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**ORDER:** The appeal is sustained.

Cite as *Matter of H-C-*, ID# 14945 (AAO Dec. 16, 2015)