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

U.S. Citizenship and Immigration Services

DATE: MAR 0 6 2015 Office: JACKSONVILLE FILE:

IN RE: APPLICANT:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Jacksonville Field Office Director 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 has resided in the United States since when he entered using a photo-substituted passport. He 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 procured admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen and is the son of a lawful permanent resident. He is the beneficiary of an approved Form I-130, 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 remain in the United States with his family.

The Field Office Director determined that the applicant had not established extreme hardship to his qualifying relatives if he were removed from the United States and she denied the Form I-601,Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of Field Office Director*, dated September 16, 2014.

On appeal, the applicant asserts that the Field Office Director failed to properly evaluate the evidence and apply the correct extreme hardship standard. *Form I-290B, Notice of Appeal or Motion,* dated October 9, 2014

The record includes, but is not limited to: statements by the applicant, his spouse, mother, and extended family; documents concerning identity and relationships; employment, financial, medical, and psychological documents; photographs; and reports and articles about conditions in Albania. The entire record was reviewed and considered in rendering 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.

In the present case, the record reflects that on October the applicant, then 23 years old, was inspected and admitted to the United States under the visa waiver program using a photo-substituted Netherlands passport. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. He does not contest his inadmissibility.

Section 212(i) of the Act provides:

> The Attorney General [now 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 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.

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-Moralez,* 21 I&N Dec. 296 (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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. 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 mother are the only qualifying relatives for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse and mother.

We first will address whether the applicant has established that either of his qualifying relatives would suffer extreme hardship if they relocated with the applicant to Albania.

The applicant's spouse says that she came to the United States in early at the age of 21 and became a U.S. citizen in She and the applicant wed in The qualifying spouse states that the thought of moving back to Albania is terrifying due to widespread corruption and organized crime. The applicant's spouse also express concern about the effect of relocation upon their children, ages . She refers to inadequate educational and health care services for their children and states that they do not speak Albanian. She also states that she is afraid that their children could be kidnapped in Albania; and because the applicant is in a blood feud, she fears that their children could become victims. To support these claims, the applicant submits several reports on conditions in Albania. These reports state: Albania is one of the poorest countries in Europe, with high unemployment; corruption and organized crime are serious problems; blood feuds are real phenomena; and Albania's health care system is unequal and underfunded. The applicant provides no proof of the blood feud his spouse asserts would affect the family.

As stated above, we consider the effects of relocation and separation to the children to the extent that the children's hardships cause hardship to a qualifying relative. The record supports concluding that the impact of relocating to Albania on their children would cause the applicant's spouse significant distress. However, though the record shows that his wife would suffer emotional difficulties if she relocates with him to Albania, the applicant has not provided sufficient evidence of other types of hardship to support finding that her hardship upon relocation would amount to extreme hardship.

The next issue to be addressed is whether the applicant has established that his qualifying mother, a native of Albania, would suffer extreme hardship if she relocated to Albania with him. According to evidence in the record, the applicant's mother, who is 69 years old, became a U.S. lawful permanent resident in She currently lives with the applicant's sister and brother-in-law in a property the applicant owns. She states that being with her children and grandchildren, who she sees "almost daily," is her priority in life. Though she describes the hardship she fears the applicant's spouse and their children would experience upon relocation to Albania, she does not address her own hardship in such a scenario.

The applicant also asserts that his mother has health issues and relies upon him for financial support. The applicant submits medical records for his mother, showing that her problems include "vitamin D deficiency, hypertension, and palpitations." The same report shows that she had a blood pressure of 108/67.

The evidence does not establish that the applicant's mother has a significant health condition that she cannot manage in Albania, or that she would be unable to find suitable medical care for her conditions there. Although the applicant provides evidence of his mother's family ties in the United States and of her medical conditions, the evidence, considered in the aggregate, is insufficient to determine that the hardship his mother would experience, should she relocate to Albania, would be extreme.

Concerning the hardship she would experience by remaining in the United States without the applicant, the applicant's wife states that she would be devastated and the thought of losing the applicant has been a source of great stress and anxiety for years. In an assessment a psychologist concludes that the applicant's wife was well adjusted prior to the news of the applicant's likely removal from the U.S., and that the applicant's wife would likely become depressed if separated from him. The psychologist says that the applicant's wife's sleep has been somewhat interrupted because she worries about the impact of the applicant's removal from the United States. Moreover, according to the psychologist's evaluation, their children also would become depressed and one child would likely suffer extreme anxiety if the family is separated.

The applicant's wife states that the applicant is the sole income provider in their household. She said that he is self-employed as a handyman and occasionally as an automobile mechanic. She states that they bought four rental properties that he manages and they make just enough money to pay their monthly bills. She says she works part-time as a merchandizer, but that she has limited work experience and does not see how she could support the family alone. Their jointly filed tax returns indicate that they had an adjusted gross income of $17,455 in 2012; $25,608 in 2011; and $24,956 in 2010. The applicant provides a "financial hardship report," indicating that he and his wife are not currently covering their monthly expenses with their income. The financial outlook does not address the applicant's job prospects in Albania. The applicant's wife says that she has never been involved in the family rental business directly; therefore it would be impossible for her to manage it. She has not included rental income in her projected budget. In support of her Form I-130 petition, filed on the applicant's behalf, the applicant's wife reported adjusted gross income in the amounts of $12,267 in 2006; $12,174 in 2007; and $16,635 in 2008. According to these returns, she was self-employed and involved in construction.

The applicant does not provide evidence to support the assertion that his spouse would not be able to find employment in his absence. Though the applicant's spouse would experience some emotional and financial difficulties if she remains in the United States without the applicant, the record does not contain sufficient evidence to show that her hardships, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship

The applicant's mother asserts that she is afraid that if the applicant returns to Albania, she might never see him again and she would be devastated. She states that she does not work or receive any income so that she relies upon the applicant and his siblings for financial support. She states that the applicant provides her and her daughters with rent-free lodging. She lives with one married daughter within walking distance of another married daughter in housing the applicant provides them.

The evidence concerning the applicant's mother reflects that she would experience emotional hardship, a normal hardship endured when families are separated. The applicant submits no other evidence concerning his mother's hardship that could be considered cumulatively with her statement to show that her hardships in the United States would rise beyond the common results of removal or inadmissibility to the level of extreme hardship

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act be above and beyond the normal, expected hardship involved in such cases.

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 as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether he merits a waiver as a matter of discretion.
In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.