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

U.S. Citizenship and Immigration Services

H6

[redacted]

DATE: JUL 10 2012 Office: Vienna File: [redacted]

IN RE: Applicant: [redacted]

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:

[redacted]

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,

for

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Albania, who entered the United States using a photo-substituted, Greek passport bearing a valid U.S. visa on or about May 31, 2000. On April 2, 2003, an Immigration Judge denied his March 12, 2001 applications for asylum and withholding of removal, and ordered him removed to Albania. After his last appeal was denied on December 5, 2005, the applicant remained in the United States until being detained on August 14, 2009 as a fugitive alien and deported on October 6, 2009. The applicant sought an immigrant visa as the beneficiary of an approved spousal Petition for Alien Relative (Form I-130). Based on the applicant's having procured admission to the United States by using fraudulent documents and his unlawful presence of one year or more, a Consular Officer found him to be inadmissible to the United States under sections 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II). The applicant is seeking a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and mother, and his lawful permanent resident father.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of Field Office Director,* July 29, 2010. The applicant filed a motion to reconsider the decision of the field office director. The motion was denied on November 4, 2010.

On appeal, counsel for the applicant contends that the denial decision erred in overlooking the extreme hardships that the applicant's parents will suffer as a result of the applicant's inadmissibility and in not considering hardship in the aggregate. In support of the appeal, counsel submits a brief and updated documentation including, but not limited to: hardship statements; medical records; psychological diagnoses; tax records for a business; and photographs. The record also contains documentation submitted in support of the original waiver request and asylum application, and their respective decisions. The entire record was reviewed and considered in rendering this decision.

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

> 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)(1) of the Act provides:

> 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 [...].

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> > (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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> . . . .
>
> (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 Attorney General (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...

A waiver of inadmissibility under sections 212(i)(1) and 212(a)(9)(B)(v) 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 in this case has three qualifying relatives: his U.S. citizen spouse, U.S. citizen mother, and lawful permanent resident father. 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-Moralez,* 21 I&N Dec. 296, 301 (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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

The record shows that the applicant was removed from the United States on October 6, 2009 after several years of unlawful presence, and remains outside the country.[1] In addition to a waiver of inadmissibility for fraud and unlawful presence, he requires consent to reapply for admission to the

[1] The applicant accrued unlawful presence from his May 31, 2000 admission using a fraudulent passport to his April 12, 2001 asylum application and, thereafter, despite any tolling under sections 212(a)(9)(B)(iii)-(iv) of the Act, from the final denial of his asylum application to his October 6, 2009 deportation.

United States until ten years have elapsed -- until October 5, 2019 -- for having been removed from the United States. The consent to reapply is addressed in a separate decision.

Counsel for the applicant contends that his parents and wife will continue to suffer physical, emotional, and financial hardship if the applicant is unable to reside in the United States. The record shows both parents to have type 2 diabetes and high cholesterol; in addition, his nearly 63 year-old father is hypertensive and has had two strokes, while his 57 year-old mother is being monitored for coronary artery disease and possible breast cancer, and has been diagnosed with major depression and anxiety incident to separation from her son and the related need to sell her restaurant. Evidence suggests that several of their conditions are uncontrolled by medication and that their health has been declining since the applicant's 2009 deportation. Documentation supports the claim that, before the applicant's departure, when his parents resided with him, he transported them to visits with treatment providers, helped them take medications as directed, and generally watched over them. The record shows that the applicant's younger brother, who also lives in the extended family household with his parents and brother, has a history of substance abuse problems making him unavailable to assume the applicant's role in helping their parents. The applicant states that his sister is married, living here with her husband, and has two children, but her whereabouts are unclear. Therefore, it has befallen the applicant's wife to act as medical intermediary for her in-laws. In addition, there is evidence she also helps care for her own parents, who emigrated with her.

Besides the applicant's mother's depression, the emotional hardship claim focuses on his wife's assertion that she, too, suffers from depression due to separation from her husband. A psychological evaluation based on numerous documented sessions between October 2011 and April 2012 observes that the applicant's wife suffers from insomnia, anxiety, impaired daily functioning, and suicidal thoughts in diagnosing her with major depression, paranoia, and anxiety. After reporting she has been prescribed several medications, her psychiatrist states that chances of improvement are better if her husband returns to the United States. The doctor notes that paranoia about being separated from her three year-old daughter has caused the applicant's wife to spend most of each day inside the house with her child, which the doctor says is unhealthy for both of them. *Psychiatric Evaluation,* April 9, 2012.

Regarding the financial hardship caused by separation, the applicant's parents contended that they would lose the family restaurant business if their son was unable to return, and this fear has been realized. The record substantiates his mother's claim that health problems limited her ability to perform as cook for the restaurant, while his father's layoff by another employer caused him to lose insurance benefits. Without insurance, the parents claim that treatment for their medical conditions has become burdensome. Evidence reflects that on or about October 10, 2010, the applicant's mother sold the family restaurant, an action that counsel claims she was forced to take because of the applicant's absence. Besides showing his key role in running the restaurant, evidence establishes that the applicant is the sole owner of a small granite business he opened on February 5, 2009, not long before being deported. His wife reports that maintaining this business requires 10 – 12 hour days and is her only source of income; she says that this is a source of stress, as she lacks both her husband's business experience and his expertise as a granite installer.

The applicant's wife claims to be living with her in-laws due to her difficult financial situation, but the record shows that their situation is also problematic. Documentation shows that the applicant's father owns the family home, but the record supports the claim that the applicant was the impetus behind the home buying decision and coordinated payment of the home loan from the proceeds of the two family businesses. His parents fear losing the house through inability, without their son's help, to pay the mortgage. As the applicant has been unable to find employment in Albania, he appears to represent an economic burden on his former U.S. household. Further, due to the demands of running the business and travel costs, the applicant's wife claims visiting her husband is not a feasible option for easing the pain of separation. Although lacking documentation of the specific roles of the qualifying relatives and the applicant in the family businesses, the record supports the contention by counsel and the parties that the applicant played an important role in both.

For all these reasons, the cumulative effect of the physical, emotional, and financial hardships the applicant's parents and wife are experiencing due to his inadmissibility rises to the level of extreme. The AAO concludes based on the evidence provided that, were the applicant's parents or wife to remain in the United States without the applicant due to his inadmissibility, they would suffer extreme hardship beyond those problems normally associated with family separation.

Counsel contends that the qualifying relatives would experience hardship if they relocated abroad to reside with the applicant. Regarding ties to the United States, the applicants' parents other two children are both naturalized U.S. citizens residing in the United States. The applicant reports that his parents sold everything when they left Albania and have nothing left there. The AAO notes that the applicant's father would forfeit his lawful permanent resident status if he left the United States for an extended period. Coincidentally, three years later, the applicant's wife and both of her parents also entered the United States on diversity visas, although she appears to have left siblings behind. Doctors for his parents confirm that their diabetes and overall health have worsened, while the website of the U.S. Department of State (DOS) establishes that healthcare in Albania falls short of U.S. standards, medication and treatment are expensive, and up-front payment often required. DOS acknowledges that emergency and major medical care requiring surgery and hospital care outside Tirana are particularly problematic. In addition to the applicant's parents both having medical conditions requiring monitoring and treatment, documentation shows that when his wife visited him with their infant daughter, the 18 month old needed treatment for bronchial pneumonia.

Besides worrying about the harm to their own health or that of dependents from moving to Albania, the applicant's wife claims to fear for her daughter's safety there due to pervasive corruption and widespread street crime. Although DOS has no current travel advisories for the country, its website substantiates his concern by reporting that "recent crime statistics indicate an increase in violent crimes throughout Albania since 2009," and:

> Organized crime is present in Albania; organized criminal activity occasionally results in violent confrontations between members of rival organizations. Armed crime continues to be more common in northern and northwestern Albania than in the rest of the country. Street crimes are more common at night. Since May 2010,

> approximately 23 explosions have occurred within the district of Tirana – most of which were either from remotely detonated car bombs or explosives placed at private residences. Similar incidents have occurred throughout Albania in the same period.

Albania—Country Specific Information, January 27, 2012.

Counsel suggests that limited employment opportunities for women in Albania render the applicant's wife's job prospects poor, while his parents' age and declining health make their prospects even more limited. The support networks of all three qualifying relatives are in the United States. As documentation supports these claims, the record reflects that the cumulative effect of the applicant's parents' ties to the United States and absence of ties elsewhere, their residence and naturalization -- and, in the case of his father, forfeiture of status -- in the United States, and their health concerns, were they to relocate, rises to the level of extreme. Similarly, the record reflects that the cumulative effect of the applicant's wife's ties to the United States, including her naturalization and presence of her parents, concerns for her daughter's health and future, and continuity of the family business, were she to relocate, also rises to the level of extreme. We observe that personal safety issues are substantiated by U.S. government information on the country. Based on a totality of the circumstances, the AAO concludes the applicant has established that his parents and his wife would suffer extreme hardship were they to relocate abroad.

Review of the documentation on record, when considered in its totality, reflects that the applicant has established that his wife and parents would all suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien 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 . . . 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-Moralez, 21 I&N Dec. 296, 301 (BIA 1996).

The AAO must then "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).

The favorable factors in this matter are the extreme hardships the applicant's mother, father, wife, and daughter would face if the applicant were to reside in Albania, regardless of whether they accompanied the applicant or remained here; the applicant's lack of any criminal convictions; extensive family ties here; supportive statements and standing in the community; employment and job creation in the United States; and passage of more than 12 years since the applicant's unlawful entry into the United States. The unfavorable factors in this matter are the applicant's purchase of and entry with fraudulent documents and unlawful presence in the United States.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the equities involved, including the passage of time since the applicant's violations of immigration law and the fact that he has resided outside the United States for over two and one-half years since being deported, the AAO finds that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden and, accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The application is granted.