

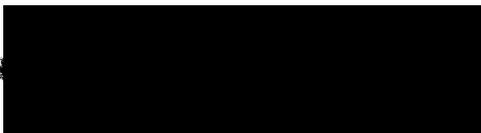
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FILE:



Office: SAN FRANCISCO, CALIFORNIA

Date: MAR 07 2005

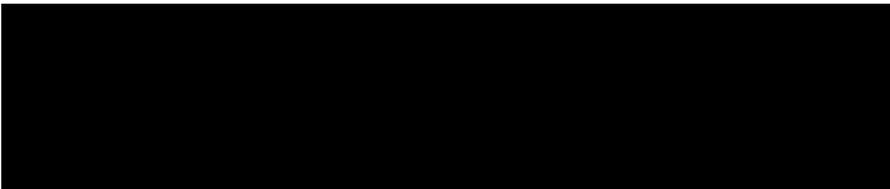
IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



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.

Robert P. Wiemann, Director  
Administrative Appeals Office

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

The applicant is a native and citizen of Russia who attempted to procure admission into the United States on March 15, 1996 by presenting her passport with a fraudulent permanent resident stamp and a fraudulently obtained reentry permit. The applicant is therefore inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant is married to a naturalized U.S. citizen and is the beneficiary of an approved petition for alien relative. She seeks the above waiver under § 212(i) of the Act, 8 U.S.C. § 1182(i). The AAO notes that the applicant was deported to Russia on March 1, 2004.

The district director concluded that the applicant had failed to establish extreme hardship to her U.S. citizen husband and lawful permanent resident (LPR) parents and denied the application accordingly. The appeal contains statements rendered by the applicant and her husband on February 8, 2004, prior to the applicant's removal, as well as numerous statements from friends and community members in support of the applicant's waiver, and country conditions information regarding the treatment of Jews in Russia. Counsel also submitted a supplemental packet on August 30, 2004, after her removal. The supplemental packet includes an updated brief, a statement by the applicant rendered on June 2, 2004, statements by her husband signed on May 30 and August 18, 2004, a psychological evaluation of the applicant's husband conducted on April 21, 2004, and medical documents for the applicant and her husband.

On appeal, counsel asserts that the applicant's actions in attempting to enter the United States through a willful misrepresentation of material facts do not "constitute extremely egregious acts of fraud," because she committed these acts at the behest of her boyfriend, and she was scared during the inspection interview. Counsel also states that the applicant's husband and parents have suffered extreme emotional hardship since her removal, due to the separation from the applicant and their concern for her welfare. Counsel notes that the applicant, at the time of appeal, was pregnant with her second child. It is presumed she has given birth since then. Counsel maintains that the applicant's husband would suffer extreme hardship if he relocated to Russia to accompany the applicant, because he is Jewish.

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 may, in the discretion of the Attorney General, 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 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.

- (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Congress' desire in recent years to limit, rather than extend the relief available to aliens who have committed fraud or misrepresentation is clear. In 1986, Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, and redesignated as § 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067). The Act of 1990 imposed a statutory bar on those who make oral or written misrepresentations in seeking admission into the United States and on those who make material misrepresentations in seeking admission into the United States or in seeking "other benefits" provided under the Act.

In 1990, § 274C of the Act, 8 U.S.C. § 1324c was added by the Immigration Act of 1990 (Pub. L. No. 101-649, *supra*) for persons or entities that have committed violations on or after November 29, 1990. Section 274C(a) states that it is unlawful for any person or entity knowingly "[t]o use, attempt to use, possess, obtain, accept, or receive or to provide any forged, counterfeit, altered, or falsely made document in order to satisfy any requirement of this Act."

In this case, the applicant attempted to procure admission into the United States using a false reentry permit and a false stamp showing permanent resident status in her passport, in violation of § 212(a)(6)(C). Counsel states that the applicant was unaware of the false nature of her documentation. In support of this contention, counsel submits a declaration by the applicant explaining that her then-boyfriend procured the documents without her knowledge of their nature. In her sworn statement to the immigration inspector on March 16, 1996, however, the applicant related a completely different origin for her documentation, wherein she paid an unknown person \$10,000 to obtain the stamp and reentry permit.

Whether or not she obtained the documentation knowing it was falsely procured, she knowingly misrepresented material facts during her inspection in order to enter the United States. In her statement on appeal, the applicant explains that her boyfriend, to whom she states she paid \$10,000 for a "rush job" from an unnamed law firm, called her before she returned to the United States. She states that her boyfriend warned her that there was a problem with her papers and instructed her to lie to immigration inspectors, saying that she was married to a U.S. citizen, which, at that time, was untrue. Despite her claimed doubts about this procedure, she did not attempt to check on the problem, at the U.S. consulate, for example, before returning to the United States. When questioned by the immigration inspector, she stated that she was married to a U.S. citizen and that she was a permanent resident, facts which she knew to be false. The evidence on the record establishes that the applicant is subject to the grounds for inadmissibility at § 212(a)(6)(C).

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for § 212(i) relief, once established, it is but one

favorable discretionary factor to be considered. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996). For example, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568-69 (BIA 1999) held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a § 212(i) waiver application in the exercise of discretion. In this case, since the director failed to find that the applicant established the requisite extreme hardship to her spouse or parents, it was not necessary to conduct an examination of discretionary factors, such as the applicant's popularity within her community.

In *Cervantes-Gonzalez, supra*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act. These 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; significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. See *Cervantes-Gonzalez* at 565-566. 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.

In this case, the applicant's qualifying relatives are her U.S. citizen spouse and LPR parents. Counsel asserts that the applicant's husband, who is a native of the Ukraine, cannot relocate to Russia, because both he and the applicant will suffer persecution on account of their Jewish ethnicity. The record contains country conditions information indicating that Jews in Russia often suffer from societal hostility and discrimination, and that the government does little to protect them. Counsel states that much of the discrimination of Jews is based on their appearance and their names; however, the record does not explain in what way the applicant or her husband have a Jewish appearance, or how their names reveal their Jewish heritage. The AAO notes that the applicant, who was a university student in Russia, travelled in and out of her country numerous times. In fact, she obtained a J-1 exchange student visa and first entered the United States in January 1995. She returned to Russia for the summer of 1995, then reentered the United States on September 1, 1995, again with a J-1 visa. Despite her claimed fear of persecution she did not apply for asylum during her first or second visit to the United States, but only did so when faced with the failure of her attempt to enter this country through misrepresentation. The immigration judge (IJ) determined that the applicant did not have a well-founded fear of persecution, and he denied the applicant's asylum application. The BIA affirmed the IJ's decision. The record does not indicate that, since her return to Russia, the applicant has experienced any trouble on account of her ethnic background. Taking into account all the documentation presented, the record does not establish that the applicant's husband would suffer extreme hardship on account of his Jewish ethnicity should he relocate to Russia. He is not, in any case, required to do so.

Counsel also asserts that the applicant was the main source of income for the family, because her husband is disabled; thus, her removal has caused him financial hardship. The record reflects that the applicant's husband suffered a back injury in a 2003 car accident, and as a result, he has experienced pain and difficulty in bending and lifting objects. The medical documentation on the record indicates that the applicant's husband suffered from chronic back pain well before that accident, however, as in about 1990 he suffered an injury after a bad jump while a paratrooper in the military. The record also indicates that, although the

applicant's husband was unable to continue working as a plumber after the car accident, he was employed in an office job until he decided to quit in order to assist the applicant in preparing her waiver application. The record does not indicate that the applicant's husband will be permanently unable to work or permanently disabled such that he is unable to care for himself or their child. In fact, in a Treating Physician's Report of Disability Status dated April 15, 2004, [REDACTED] indicated that the applicant's husband was expected to return to his pre-injury occupation after surgery. The applicant's husband has elected to postpone the surgery, however.

In addition, the medical documentation does not demonstrate that the applicant's child, who was born prematurely, is disabled or that he requires any care out of the ordinary, such that the applicant's absence would cause her husband hardship beyond that which other single parents experience. In addition, the AAO notes that the child's grandparents all live in the United States, and they have assisted the applicant's husband in caring for the child. Also, according to information in the supplemental appeal packet, the applicant's son and mother were with the applicant in Russia as of the summer of 2004. The duration of their visit is not specified.

The applicant's husband states that he has experienced severe emotional suffering since his separation from the applicant. In support of this contention, counsel submits a psychological report prepared by Sonia [REDACTED] LCSW, based on based on a single interview which took place on April 21, 2004. Ms. [REDACTED] expresses the opinion that the applicant's husband displays signs of physical tension and persistent anxiety. She also indicates that the applicant's husband's demeanor is consistent with clinical depression. [REDACTED] does not recommend any medical or psychological therapy to treat the applicant's husband's symptoms, and she does not indicate that he will become incapacitated or unable to care for himself. The AAO acknowledges that such a separation necessarily causes a variety of difficulties, including depression and emotional suffering. Nevertheless, this reaction does not go beyond that which is ordinarily experienced by persons affected by the removal of a family member. Moreover, in *Hassan v. INS*, 927 F.2d 465 (9<sup>th</sup> Cir. 1991), the Ninth Circuit Court of Appeals stated 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. Regarding the applicant's LPR parents, there is no evidence that they require the applicant's presence in order to function normally. The record contains no documentation that establishes that they would suffer extreme hardship if the applicant is removed.

Counsel contends that the applicant's husband and parents worry about her wellbeing in Russia, to the extent that their concern occasions them extreme hardship. As noted above, it has already been determined that the applicant does not have a well-founded fear of persecution in Russia, nor has she experienced any ethnic-based hostility since her return to Russia. On appeal, counsel submits a translated, undated document from an outpatient psychiatric clinic in St. Petersburg where the applicant received treatment in March 2004. V.N. [REDACTED] chief physician, writes that the applicant suffers from depression, mood swings, and "aggressive reaction," and he states that the applicant's family situation prevents her condition from improving. As previously mentioned, however, the applicant's own hardship is not under consideration in these proceedings, except as it causes her qualifying family members extreme hardship. The record does not reflect that the

applicant's family's concern for her wellbeing is extraordinary, or that their anxiety has caused them extreme hardship.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her U.S. citizen spouse or LPR parents suffer extreme hardship over and above the normal economic and social disruptions involved in the removal of a family member. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 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.