



U.S. Citizenship
and Immigration
Services

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[REDACTED]

FILE:

[REDACTED]

Office: SAN FRANCISCO, CALIFORNIA

Date: SEP 21 2005

IN RE:

Applicant:

[REDACTED]

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:

[REDACTED]

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco (district director). A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted and the previous decisions of the district director and the AAO will be affirmed

The applicant is a thirty-two-year-old 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 the daughter of lawful permanent resident parents. She is the beneficiary of an approved petition for alien relative filed by her spouse. She seeks the above waiver under § 212(i) of the Act, 8 U.S.C. § 1182(i). The record reflects 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 matter was appealed to the AAO, which denied the appeal on March 7, 2005. A Motion to Reconsider the Dismissal of the Appeal was erroneously filed with the AAO on April 6, 2005, instead of being filed with the district office. Counsel has requested that the AAO reopen the case sua sponte for the purpose of considering the additional arguments made in support of the applicant's waiver application. Counsel's motion consists of a twenty-three page document setting forth the errors alleged to have been made by the AAO in its decision in the case, including the claim that the AAO applied an incorrect hardship standard, and that the AAO erred in its evaluation of each of the various claims of hardship to the applicant's qualifying relatives. *See Counsel's Motion to Reconsider*, dated April 5, 2005. Each of counsel's arguments will be examined in turn following a brief review of the applicable statutes.

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:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

8 C.F.R. § 103.5(a)(3) (2002) states in pertinent part:

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service [now Citizenship and Immigration Services (CIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The following is a review of each of the assignments of error alleged in the Motion to Reconsider.

Counsel's Claim that the AAO Applied the Incorrect Legal Standard

The AAO turns first to the claim that in considering the appeal, the AAO required a showing of hardship that is beyond what is required to prove extreme hardship in connection with a section 212(i) waiver. Specifically, counsel asserts that the AAO “apparently applied a standard that is far more stringent than the ‘extreme hardship’ standard, and is in fact quite similar to the “exceptional and extremely unusual hardship standard.” See *Motion to Reconsider*, dated April 5, 2005, at p. 9. In his motion, counsel cites to two Board of Immigration Appeals (BIA) decisions as supporting the contention that the “extreme hardship” standard to be met in evaluating a section 212(i) waiver, is equivalent to the hardship showing that must be made in connection with an application for suspension of deportation under former INA § 244, 8 U.S.C. § 1254. The cases cited by counsel are *Matter of Cervantes-Gonzalez*, 22 I. & N. Dec. 560, 565 (BIA 1999), and *Matter of Kao and Lin*, 23 I. & N. Dec. 45, 49 n.3 (BIA 2001). Counsel contends that rather than applying the extreme hardship standard developed in suspension cases, that has now been applied by the BIA to 212(i) waiver cases, the AAO has, instead, imposed the higher “exceptional and extremely unusual hardship” standard that is applicable to cancellation of removal pursuant to section 249A(b) of the Act, 8 U.S.C. § 1229b(b).

The AAO agrees with counsel that in developing the review standards applicable to section 212(i) cases, the BIA has found that the *factors* to be examined in making a determination regarding whether eligible relatives would experience extreme hardship include the same factors deemed relevant in evaluating extreme hardship claims for purposes of suspension of deportation. This is not the same thing as saying that the adjudicator is somehow bound by any determinations regarding the adjudication of suspension of deportation, however. While *Cervantes-Gonzalez* recognized that in developing that standard certain common factors would be examined, there is nothing to suggest that the AAO is constrained from conducting an independent analysis for purposes of analyzing a waiver request. Moreover, it is noted that in recognizing the common factors between the two types of applications, the BIA was careful to assert that the Attorney General and his delegates have the authority to construe extreme hardship narrowly. *Id.* at 566, citing *INS v. Jong Ha Wang v.*

INS, 450 U.S. 139 (1981), which counsel may be erroneously equating with the application of a more stringent legal standard for evaluating the claim.

Counsel seeks to persuade the AAO that there is a vast difference between the hardship that must be established under the extreme hardship standard applicable here, and the exceptional and extremely unusual standard applicable to cancellation of removal claims, and that the AAO interposed the standards in its review of the applicant's case. In support of the contention, counsel notes that the BIA has recognized ordinary hardships related to deportation as being factors that are to be considered in an assessment of extreme hardship, whereas in evaluating the exceptional and extremely unusual standard applicable to cancellation of removal, the BIA has required hardship that is substantially different from and beyond that which would normally be expected from a deportation of an alien with close family members. *See Counsel's Motion to Reconsider*, at p. 11. While the AAO does not dispute that there is a difference in the degree of hardship that must be demonstrated between the two standards, the fact that a higher hardship standard exists for applicants for cancellation or a waiver of inadmissibility, does not operate to diminish the heightened standard of extreme hardship. That hardship, by definition, is not satisfied by a showing of usual, or ordinary hardship, but must rise to the level of being *extreme* hardship. The fact that factors to be considered may include elements of commonly encountered hardship, those hardships, either individually, or in the aggregate must rise to a level of being extreme. Though counsel puts much emphasis on the two hardship standards, the fact that Congress has acted to restrict access to cancellation through the adoption of a heightened standard, does not mean that the extreme hardship applicable in the suspension and waiver contexts has been relaxed.

In reviewing its previously issued decision, the AAO does not agree that it applied a heightened standard to the applicant's case. Counsel's real disagreement with the AAO's decision appears to be that in considering the various factors presented by the applicant, the AAO did not conclude that the factors, taken together, added up to a finding of extreme hardship. A disagreement with the conclusion, however, does not mean that that conclusion was reached through the application of the wrong legal standard. While counsel states in his motion that "the AAO apparently applied a standard that is far more stringent than the 'extreme hardship' standard" counsel has not described where that higher standard has been imposed. Rather, counsel's approach has been to describe the various factors raised in support of the waiver application and declare that the evidence of extreme hardship presented as to each factor was "overwhelming," "obvious," or "ample." Counsel's motion sets forth those factors that counsel believes, taken together, demonstrate extreme hardship. The AAO turns next to those factors, and counsel's arguments to determine whether, as counsel asserts, the AAO erred in its previous conclusion that they did not rise to the level of extreme hardship.

Counsel's Contention that the AAO Erred in Finding that the Evidence Demonstrated that the Applicant's Spouse Would Experience Only Hardship Routinely Experienced When a Family Member is Removed

The evidence offered in support of a finding of extreme hardship to the applicant's spouse is somewhat overlapping, and consists primarily of evidence demonstrating emotional and financial hardship that the applicant would face upon separation from his spouse and the potential break-up of the family, as well as evidence of hardship that the spouse would himself encounter upon relocating to Russia on account of his Jewish ethnicity.

On the issue of the emotional hardship that it is alleged will be experienced by the applicant's spouse, counsel notes that the AAO found that the spouse's "'severe emotional suffering,' 'persistent anxiety' and 'clinical depression' did not go beyond that which is ordinarily experienced by persons affected by the removal of a family member."² *Decision of the AAO*, dated March 7, 2005. Counsel's motion notes that the AAO cites to *Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991), and argues that reliance on the case was misplaced because the hardship that the applicants' spouse would experience, unlike the alien in *Hassan*, "clearly meets the 'extreme hardship' standard." *Counsel's Motion to Reconsider*, at p. The AAO disagrees with counsel that the reference to *Hassan* was misplaced or somehow inappropriate, and also disagrees with counsel's suggestion that the psychological evaluation clearly established extreme hardship.

First, the district director cited to the [REDACTED] case, which, by the court's own statement was one of the first cases in the Ninth Circuit to address the issue of extreme hardship for purposes of section 212(h) of the Act, and which evaluated the application by referencing the extreme hardship standard applicable to suspension of deportation cases under section 244(a)(1) of the Act. *Hassan*, at pp. 467. The *Hassan* court considered the issue of emotional hardship and did not disturb the BIA's finding that it did not rise to the level of extreme hardship, noting that the Board did not consider the evidence to be "overwhelming." *Id.* The court also noted that several cases and BIA decisions had addressed the issue of extreme hardship and took from those cases several principles, including the fact that extreme hardship requires a showing of "significant actual or potential injury. (citing *Matter of Ngai*, Interim Decision No. 2989 at 3 (BIA 1984). The court also found that the common results of deportation or exclusion are insufficient to prove extreme hardship (citing *Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986), and noted that the cases had found that a finding of unique extenuating circumstances were necessary to demonstrate extreme hardship (citing *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968). While the Ninth Circuit decision's principal conclusion on the issue of the emotional hardship was that it would not disturb the Board's finding where the record reflected that the BIA had fully considered the evidence of extreme hardship, it nonetheless endorsed an interpretation of extreme hardship triggered by emotional hardship, that required the hardship to be of a nature that is unusual or beyond what would normally be expected in a case where an alien is barred from admission to the United States and further recognized that separation from family is itself insufficient, absent a showing of a more extreme impact.

In the instant case, counsel appears to suggest that the applicant's emotional hardship is significantly greater than that claimed by the applicant in *Hassan*, and that the AAO's error lay in equating the hardship the applicant's spouse would experience with that of the alien in *Hassan*, thus minimizing hardship to the spouse. Counsel views the spouse's emotional hardship as significantly greater than the hardship in *Hassan*, noting that unlike the applicant in *Hassan*, the emotional hardship to the applicant "clearly meets" the extreme hardship standard. In support of this position, counsel quotes from excerpts of the psychological evaluation to the effect that the separation would have "devastating consequences" for the spouse's "emotional, psychological, and financial well-being" and describes the spouse as "feeling overwhelmed, helpless, at times hopeless, and unable to sleep and subject to fits of uncontrolled crying spells and wishe[s] for complete

² The AAO notes that although counsel's motion quotes as findings of the AAO these terms relating to the emotional hardship to be experienced by the applicants' spouse, the terminology is taken from the psychological report presented by the applicant, rather than from factual findings made by the AAO as to the degree of the nature of the emotional hardship to be experienced by the applicant's spouse.

solitude." *Counsel's Motion to Reconsider*, at p. 13. According to counsel, the psychological report demonstrates that the applicant's hardship is "clearly beyond the expected sadness that a family member experiences based on separation from a loved one." *Id.*

The AAO does not agree that either the district director or this office in its previous review of the issue failed to properly evaluate the emotional hardship to the applicant's spouse. First, as noted above, the AAO decision did not reference the *Hassan* case in order to equate the hardship of the alien in that case to the hardship in the instant case, but rather as a case that set forth general principles relating to the extreme hardship standard when applied beyond suspension cases, and the framework for considering claims of emotional hardship.³

Second, while counsel makes liberal reference to the psychological evaluation offered in support of the application, it is noted that the district director and AAO had considered the report and evaluated the extent to which it established or failed to establish extreme hardship. The AAO's decision noted that the psychological report was "based on a single interview which took place on April 21, 2004." *Decision of the AAO*, dated March 7, 2005, at p. 5. The decision also noted that the report did not recommend any medical or psychological therapy and did not indicate that the applicants' spouse would become incapacitated or unable to care for himself. *Id.* Consequently, the record reflects that the psychological report was analyzed in the AAO's previous consideration of this case, and a judgment was made regarding its probative value. The fact that the report uses language such as "devastating consequences" does not itself mean that the applicant has experienced or would experience such consequences. It was further appropriate for the AAO to consider the context in which the statement was made and the purpose of the psychological report in terms of the amount of weight to be afforded to the assertions made in the document. While the document merits some weight in analyzing the degree of hardship that would be experienced by the applicant's spouse, the AAO's conclusion regarding the deficiencies in the report was not unreasonable. The record reflects that it was a report prepared after one consultation with a social worker undertaken shortly before the submission of a motion in the applicant's case, and reflects largely self-reporting by the applicant's spouse. The weight to be afforded the report is limited, and its conclusions insufficient to support a finding of extreme hardship as a result of the emotional distress that would be experienced by the applicant. The fact that the applicant's spouse would experience significant emotional distress is accepted. The critical issue, however, is whether that hardship rises to the level of extreme hardship, meaning, as noted by the *Hassan* case, that it was of such a degree, and nature that it went beyond the type of hardship, including emotional hardship that would ordinarily be associated with a separation from the family.

Counsel's Contention that the AAO Erred in Failing to Find that the Evidence Demonstrated that the Applicant's Spouse Would Experience Extreme Hardship on Account of His Jewish Ethnicity

Counsel next takes issue with the AAO's conclusion in its March 7, 2005, decision that the evidence had not established that the applicants' spouse would suffer extreme hardship on account of his Jewish ethnicity should he relocate to Russia with his spouse. Counsel asserts that the evidence in the record demonstrated

³ The AAO notes that even had the AAO intended to conduct a comparative analysis of the relative hardships involved in the two cases, it would have been difficult to do so given that the *Hassan* decision, while upholding the BIA's decision finding that the hardship did not rise to the level of extreme hardship, did not describe in any detail the evidence offered in support of a finding that the emotional hardship rose to the level of extreme hardship.

that the couple would be "targeted in Russia based on their Jewish ethnicity" as they had been targeted based on their Jewish appearance and Jewish last names. The motion highlights excerpts from statements submitted by the applicant and her spouse regarding the negative experiences they had had when living in Russia and the Ukraine. Counsel also noted that documentation had been submitted to the AAO regarding the persecution of Jews in the former Soviet Union, and noted that in modern day Russia, Jews are subject to discrimination if they were perceived by anti-Semitic groups as being Jewish. Counsel disputes the AAO's finding that there was insufficient evidence of what characteristics would reveal their Jewish ethnicity to others resulting in discrimination or harassment. Counsel also notes that the grant of refugee status to the applicant's spouse evidences a recognition by the government that he would face serious threats or freedom to his life were he to return to Russia or the Ukraine. *Id.*

A review of the record does not indicate that the AAO erred in its assessment. While the situation to which the applicant's spouse would return is a relevant factor in the evaluation of extreme hardship to the applicant's qualifying relatives, the evidence of whether the applicant's spouse would face discrimination is speculative and inconclusive. The previous AAO decision reveals that these claims were considered and addressed by the AAO. Decision of the AAO, at p. 4. While counsel is dismissive of the findings, and relies upon the statements of the couple and her parents, and the fact that the spouse had been granted refugee status to demonstrate extreme hardship, several factors lead the AAO to conclude that the requisite showing of hardship has not been made. While the evidence of previous harassment of the applicant and her spouse is some indication that the spouse may experience hardship in the future, the evidence is not so definitive and is also contradicted by other evidence. The excerpts from the statements submitted by counsel as to problems faced by the couple in the past indicate that they were subject to unwelcome attention and harassment. However, the evidence indicates that the incidents appear to have occurred in isolated settings, and at a significant time in the past, with no indication that the couple has reason to believe that such harassment would recur in the future. In fact, other evidence indicates that it may not continue, or at least that the evidence is not so compelling, and that a prediction that the applicant's spouse will experience extreme hardship as a result is speculative. First, the applicant sought and was denied asylum based on these very same claims, when those claims were presented before the immigration judge. *Decision of the Immigration Judge*, dated August 31, 1998.

Second, although the applicant may have experienced some harassment during her early life in Russia, it is also apparent that she was afforded the opportunity to attend the "prestigious St. Petersburg Conservatory, in St. Petersburg." *Counsel's Motion to Reopen*, dated April 5, 2005, at p. 5. The evidence and counsel's motion further reflect that the applicant traveled back and forth between Russia and the United States several times in connection with her studies and while participating in the J-1 visa program. It does not appear that her Jewish ethnicity operated to prevent her from pursuing these unique opportunities. Furthermore, the evidence reflects that the applicant has been living in Russia since the time of her deportation from the United States on March 1, 2004, and since that time has given birth to her second child and has been joined in Russia by her first child and her mother, factors that would indicate that the applicant has made a determination that the discrimination and any other problems associated with life in Russia, do not rise to such a level that her family members would be better off in the United States.⁴ Finally, counsel references the fact that the

⁴ The AAO acknowledges that it is hardship to the applicant's qualifying family members and not to the applicant herself that is relevant for purposes of the extreme hardship analysis. However, to the extent that the applicant's claim is based in part upon

applicant's spouse was granted refugee status and asserts that this establishes that he is at risk of harm should he return to Russia. While the AAO acknowledges that the applicant's spouse was granted refugee status, as noted in the previous discussion, the record is not clear that the applicant's spouse would, in fact, face any difficulty on account of his Jewish heritage were he to return to Russia today. The fact that the evidence does not indicate any substantial difficulties encountered by the applicants' spouse since her return to Russia on account of owing to her Jewish heritage is an additional reason to conclude that the evidence does not support the claim. Finally, it is noted that even if there were evidence to establish that the applicant's spouse would face the discrimination and harassment that is feared, there is nothing that compels the applicant's spouse to return to Russia. As a naturalized citizen he is free to remain in the United States. While separation from his spouse would cause him hardship, that alone does not rise to the level of extreme hardship.

Counsel's Contention that the AAO Erred in Failing to Find that the Evidence Demonstrated that the Applicant's Spouse Would Experience Extreme Financial Hardship

The next assignment of error raised by counsel relates to the AAO's finding that the evidence of financial hardship to the applicant's spouse did not rise to the level of extreme hardship. The claim of financial hardship stems from the spouse's alleged inability to work as a skilled plumber, due to a back injury incurred in a 2003 car accident which, it is alleged, restricted his ability to work. The result was that the spouse was able to work only sporadically and with great pain, and led, ultimately, to the spouse resorting again to disability pay. *Counsel's Motion to Reconsider*, dated April 5, 2005. The AAO found that the medical documentation indicated that the applicant's back pain pre-dated the recent accident related injury, and noted that although the spouse had secured an office job, he voluntarily left that position in order to assist the applicant with her immigration case. Decision of the AAO, at p.5. The decision further noted that the applicant's physician indicated that he would be expected to return to his pre-accident employment following surgery; surgery which the applicant apparently elected to postpone. *Id.* Thus, it appears that the applicant's lack of employment is to a considerable degree self-imposed. Counsel's motion does not address these findings by the AAO, and simply asserts that the applicant "was forced to resign from the position when the applicant was arrested due to the need to arrange for child care and deal with her case." *Counsel's Motion to Reconsider*, at p. 17. Counsel further states that although he would try to obtain a similar position if the applicant is not allowed to return to the United States, he fears that the reduced income would be insufficient to cover necessary expenses. *Id.* This explanation is deficient to say the least and does nothing to advance the applicant's case. It tends, if anything, to advance the previous finding that the spouse's failure to seek employment is a self-imposed situation, and may have been a decision made in an effort to bolster the claim that the spouse is financially dependent upon the applicant.⁵ The AAO notes that no evidence has been submitted in support of the contentions raised by counsel, such as additional tax records to demonstrate the diminution in the applicants' financial situation, or documentation of how the expenses of the applicant exceed the amounts available to him through his disability payments, or other evidence of how his financial situation has been adversely affected. Presumably this evidence would include evidence of failure to pay

discrimination and harassment that would face her husband on account of his Jewish ethnicity if he returned to Russia or Ukraine, it is relevant to note what the experience of the applicant's spouse has been when he is alleged to share those characteristics.

⁵ The AAO views with some skepticism the assertion that the applicant's spouse is financially dependent upon the applicant. The record reflects that the applicants' spouse's salary from position as a piano teacher amounted to approximately \$17,000 during the 2001 tax year, out of a total income for the couple of \$56,489.

bills, including mortgage payments, evidence of decreased savings, evidence of child care expenses, and other similar evidence. Absent evidence in the record aside from the unsupported assertions of the applicant and his spouse, the AAO finds that there is insufficient evidence from which to conclude that the applicant's spouse has, or will experience financial hardship if the applicants' spouse is not permitted to return to the United States.

Counsel's Contention that the AAO Erred in Failing to Find that the Evidence Demonstrated that the Applicant's Husband and Parents Would Experience Extreme Hardship if the Applicant is not Permitted to Return to the United States

Counsel next asserts that the evidence demonstrates hardship to the parents should she not be permitted to return to the United States. This stems, apparently from their concern over the discrimination that she will allegedly suffer in Russia, and their recollection of the difficult life their family and other Jews experienced in Russia. Other than the recounting of experiences from the past, which an immigration judge considered and found insufficient to establish that the applicant would experience persecution in Russia, there is little in the evidence that indicates that this concern for their daughter's welfare as a resident of Russia in 2005 is well placed. Furthermore, while they may have such concerns, they would appear to be concerns of the type that would normally be expected and there is no indication from the record that such concerns, whether standing alone or when considered with the other elements of hardship, support a finding of extreme hardship.

Counsel's Contention that the AAO Erred in Failing to Find that the Evidence Demonstrated that the Applicant's Husband and Parents Would Experience Extreme Hardship Based on the Applicant's "Chronic and Deteriorating Mental Illness"

The final assignment of error raised by counsel with respect to the AAO's analysis of extreme hardship, concerns the hardship that the applicants' parents and spouse would experience based on their concern over the applicant's mental health due to the unavailability of adequate medical care. Counsel argues that if the applicant remains in Russian, the applicant's parents and spouse "would suffer severe and persistent anxiety about her health, particularly her emotional and mental health." *Counsel's Motion to Reconsider*, at p. 20. The claim made in support of a finding of extreme hardship is that the applicant's parents and husband have witnessed the applicant's depression that was brought about by the "trauma she experienced in Russia as a child" and are concerned that the applicant would suffer a severe psychological impact due to her inability to return to the United States. Counsel equates this concern for the applicant as constituting extreme hardship to them based upon the anxiety they would experience over her psychological situation and her inability to access adequate psychological care in Russia. *Id.*, at p. 21-22.

The AAO notes that little evidence has been submitted with the motion to demonstrate how if at all, the applicant's psychological problems have been adversely affecting the parents, other than their general sense of anxiety and concern about the applicant's future. As counsel notes in his brief, a concern of the family is the adequacy of the medical treatment. Counsel also cites to exhibits in the record describing the situation of health care in Russia, as well as a 2003 decision of the European Court of Human Rights, which condemned the 1999 detention of a Russian national diagnosed as suffering from paranoid schizophrenia as violative of the European Convention on Human Rights. While the AAO does not doubt the genuine concern that the

applicant's family has for her well-being, the AAO notes that even if the health care situation was as dire as stated, it is not, despite counsel's efforts to highlight the difficulties that the applicant may encounter, the hardship to the applicant that is at issue, but rather the hardship that such situation may cause the applicant's qualifying relatives.⁶ While it is expected that the applicant's parents and husband would be concerned about her well-being, there is nothing that requires a reversal of the previous finding by the AAO that this situation did not rise to the level of extreme hardship. If anything, the fact that the applicant's mother is now in Russia with the applicant, would suggest that the hardship arising from concern about the applicant's health has lessened now that the applicant's mother is able to assist with her care. Counsel's argument asserts hardship befalling the applicant's parents but does not offer objective evidence in support of the hardship. The objective evidence that exists, in the form of medical records relating to the applicant's diagnosis and treatment in Russia, while it may demonstrate hardship the applicant is experiencing does not translate into extreme hardship for the parents. Counsel's arguments appear to bootstrap evidence of hardship being experienced by the applicant, which is not relevant for purposes of this application, into a determination that the parents are or will experience extreme hardship. The evidence does not support such a finding and the applicants' hardship, while regrettable is not pertinent to the inquiry. Moreover, it appears, that at least in the case of the applicants' mother, she has joined the applicant in Russia to assist with her care and that of the applicant's children, a move which, while assisting the applicant, is likely to lessen the mother's anxiety over her daughter's situation by taking an active role in her recovery, and eliminating the physical separation. It is noteworthy that the record contains no evidence from the parents themselves following the applicant's deportation from the United States that describes any additional hardship that they may be experiencing. The existence of such evidence would not, in and of itself establish extreme hardship, but its absence casts doubt on the claim of hardship. Although counsel asserts the existence of great hardship to the applicant's parents in the brief accompanying the motion to reopen, the assertions of counsel are not evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel concludes by observing that the evidence is overwhelming and that that the applicant deserves to be granted a section 212(i) waiver in the exercise of discretion. As was the case in this office's initial decision, the failure of the applicant to demonstrate that she is eligible for the waiver as a matter of statutory eligibility means that it is unnecessary to determine whether she merits relief in the exercise of discretion.

In proceedings involving an application for a 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. The applicant has not met that burden. Accordingly, the application is denied.

ORDER: The previous decisions of the district director and the AAO are affirmed.

⁶ Even if the applicant's hardship were relevant, the AAO notes that the evidence submitted in support of the application and motion does not necessarily have any applicability to the applicants' situation. For example, the reference to the decision of the European Court of Human Rights addresses the situation of an individual with a severe mental disturbance, whom the court found was not receiving adequate mental health treatment during her incarceration. Counsel asserts that a similar fate could occur to her if she were to have a nervous breakdown—a prediction that is speculative. Further the evidence reflects that the applicant has, in fact, been receiving treatment for her mental health.