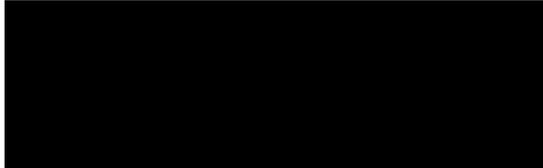


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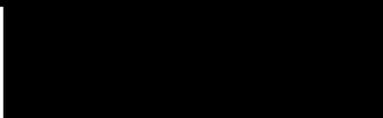
FILE:

Office: LOS ANGELES

Date:

DEC 06 2006

IN RE:



APPLICATION:

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

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, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, denied the waiver application, and it 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 was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The applicant is the spouse of a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated March 21, 2005.

The record reflects that, on January 10, 1995, the applicant was convicted of trespassing and injuring property in violation of section 602 of the California Penal Code (CPC). The applicant was sentenced to 2 years probation. On February 13, 1998, the applicant was convicted of grand theft of property greater than \$400 in violation of section 487(a) of the CPC. The applicant was sentenced to 36 months of probation and one day in jail. On July 6, 1998, the applicant was convicted of second-degree burglary in violation of sections 459 and 460(b) of the CPC. The applicant was sentenced to 3 years of probation. On May 24, 2002, the applicant's conviction for grand theft was set aside and the charges were dismissed pursuant to section 1203.4 because she had fulfilled the conditions of her probation.

On June 12, 2002, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that the applicant's spouse would suffer extreme hardship if the applicant is denied a waiver. *See Applicant's Brief* dated March 31, 2006. In support of the appeal, counsel submitted the above-referenced brief, medical and psychological documentation for the applicant and her spouse and copies of documentation previously provided. The entire record was reviewed and considered in rendering a decision in this case.

Section 212(a)(2)(A) of the Act states in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
 - (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

- (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

....

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

The district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's admission to and conviction for grand theft and burglary, crimes involving moral turpitude. Counsel does not contest the district director's finding of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(h) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that, on May 5, 1996, the applicant married her U.S. citizen spouse, [REDACTED] (Mr. [REDACTED]). The applicant and Mr. [REDACTED] have no children. The record reflects further that the applicant is in her 30's, Mr. [REDACTED] is in his 40's, and Mr. [REDACTED] may have some health concerns.

Counsel contends that Mr. [REDACTED] will suffer extreme hardship if he were to remain in the United States without the applicant because he suffers from hypertension and high cholesterol which are exacerbated by the high level of anxiety and stress he has in relation to the applicant's possible deportation, he is at high risk for

cardiovascular disease which is exacerbated by his increased smoking due to the stress of the applicant's immigration situation, he requires long-term medical care and follow-up for his medical conditions and his physician believes that the resolution of the applicant's immigration matters will lessen his anxiety and stress. Counsel asserts that [REDACTED] has relied on the applicant for his physical and mental wellbeing and would be left alone with no one to care for him if she were returned to Russia. Counsel also asserts that Mr. [REDACTED] parents are becoming elderly and may require his financial assistance in the near future. Mr. [REDACTED] in his affidavit, states that he relies on the applicant's presence in his normal everyday activities and separation would cause him severe hardship of an emotional nature. He states that he is a photographer and that his wife is very involved in some of his projects and is needed to operate the studio. He also states that his wife helps him with his problems with fitness and weight by cooking him macrobiotic meals and providing him with massage to control an old shoulder injury that was non-responsive to conventional therapies.

The medical documentation indicates that [REDACTED] has recently been treated for high cholesterol and hypertension and has increased his smoking due to the stress surrounding the applicant's immigration issues, which place him at risk for cardiovascular disease. While the medical letter indicates that [REDACTED] requires long-term medical care and follow-up for his high cholesterol and hypertension it does not give a prognosis other than to say that resolution of the applicant's immigration situation would decrease his anxiety and stress. The medical letter does not indicate that [REDACTED] treatment requires the presence of the applicant or that he would be unable to provide himself with appropriate dietary needs. Therefore, the medical documentation may be given little weight. A psychological report indicates that [REDACTED] is suffering from major depression and separation anxiety disorder in relation to the applicant's immigration situation. The psychological report indicates the applicant has been a stabilizing force in [REDACTED] life and that Mr. [REDACTED] mental health is directly contingent on the level of hardship he is experiencing in regard to the applicant. The record does not contain evidence that [REDACTED] has received psychological treatment or evaluation other than during the appointment used to write the psychological report and it does not indicate whether [REDACTED] requires continued treatment. Therefore, the psychological report can be given little weight. Additionally, the AAO notes that the medical documentation and psychological report was issued after the Form I-601 was denied and that there was no mention of any health concerns other than fitness and weight or any psychological problems in the affidavit, which the applicant submitted with the Form I-601. There is no evidence to confirm that [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon deportation. While it is unfortunate that [REDACTED] may suffer some anxiety, stress or depression in regard to separation from his spouse, this is not a hardship that is beyond those commonly suffered by aliens and families upon deportation.

Counsel and [REDACTED] in their brief and affidavit, do not contend that [REDACTED] would suffer extreme hardship if he accompanied the applicant to Russia. [REDACTED] prior counsel, in his brief, contends that Mr. [REDACTED] would suffer extreme hardship if he accompanied the applicant to Russia because he has no rights to reside or work in Russia, the medication he takes would not be covered by insurance or may not be available in Russia and he would be leaving almost 20 years of efforts in establishing a business in the United States. *See Applicant's Brief*, dated May 9, 2005. There is no evidence in the record to suggest that the applicant and [REDACTED] would be unable to find any employment in Russia. There is no evidence in the record to suggest that [REDACTED] or the applicant suffer from a physical or mental illness for which they would be unable to receive treatment in Russia. There is no evidence in the record to reflect that [REDACTED] as the spouse of a

Russian citizen, would not be entitled to reside or work in Russia. While the hardships faced by [REDACTED] with regard to adjusting to a lower standard of living, a new culture, economy, environment, loss of an established business and separation from friends and family are unfortunate, they are what would normally be expected with any spouse accompanying a deported alien to a foreign country. Additionally, the AAO notes that, even if counsel had established the applicant's spouse would suffer extreme hardship by accompanying the applicant to Russia, as a U.S. citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. 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 be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(h) of the Act, 8 U.S.C. § 1186(h). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.