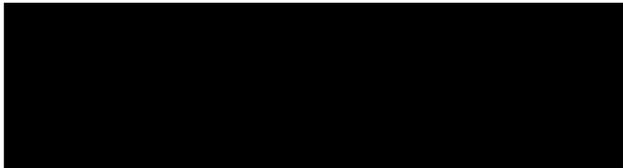




U.S. Citizenship
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Services

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FILE:



Office: MIAMI (TAMPA, FLORIDA)

JUN 18 2007

Date:

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:



PHOTIC COPY

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 waiver application was denied by the Acting District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that 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 record reflects that the applicant is the spouse of a United States citizen and that she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen husband.

The Acting District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated June 21, 2006.

On appeal, the applicant, through counsel, asserts that the denial of the applicant's admission into the United States would result in extreme hardship to her United States citizen spouse. *Form I-290B*, filed July 20, 2006.

The record includes, but is not limited to, counsel's brief, the applicant's affidavit, statements from the applicant's husband, a letter from [REDACTED] regarding the applicant's husband's mental health, court dispositions on the applicant's arrests and convictions, and numerous affidavits and statements from colleagues, friends, and family of the applicant and her husband. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on October 8, 1999 and May 2, 2002, the applicant was convicted of retail theft and petit theft, respectively, and was ordered to pay fines and costs.

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

(A) *Conviction of certain crimes.*—

- (i) In general.—Except as provided in clause (ii), any 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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime...

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

- (h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that—

(i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii)the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii)the alien has been rehabilitated; or

(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 established to the satisfaction of the [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...

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In the present application, the record indicates that on December 10, 1997, the applicant entered the United States at New York, New York, on a B1/B2 nonimmigrant visa. On September 22, 1999, the applicant was arrested in Clearwater, Florida, for retail theft. On October 8, 1999, a Pinellas County Circuit Court judge convicted the applicant of retail theft and ordered that adjudication of guilt be withheld. On February 26, 2002, the applicant was arrested in Clearwater, Florida, for retail theft. On May 2, 2002, a Pinellas County Circuit Court judge convicted the applicant of petit theft and ordered the applicant to pay a fine and costs. On December 16, 2003, the applicant married [REDACTED], a United States citizen. On June 24, 2004, the applicant filed a Form I-130, an Application to Register Permanent Resident or Adjust Status (Form I-485), and a Form I-601. On June 21, 2006, the Acting District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien herself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse.

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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The AAO finds that the applicant meets the requirements for a waiver of her grounds of inadmissibility under section 212(h)(1)(B) of the Act, in that the applicant's spouse would suffer extreme emotional and psychological hardship as a result of his separation from the applicant. Counsel contends that the applicant's husband "would suffer extreme hardship if the Applicant were deported from the United States. He is a 67-year-old retired veteran with extensive ties to the U.S. He has no ties to Russia and no economic prospects in that country." *Counsel's Brief*, page 9, filed August 16, 2006. Counsel claims that the applicant's husband would face emotional hardship if he relocates to Russia, because all of his family (4 children, 6 grandchildren, and 9 great-grandchildren) resides in the United States, and "he relied upon his family for emotional support, and they rely upon him." *Id.* at 6. Additionally, counsel claims the applicant's husband is suffering extreme emotional hardship from the thought of being separated from the applicant. *Id.* at 9; see also *Letter from* [REDACTED] dated July 11, 2006. [REDACTED] diagnosed the applicant's husband with "Acute Stress Disorder secondary to the fear of his wife being deported." *Letter from* [REDACTED] *supra*. The AAO finds that evidence in the record establishes that the applicant's husband suffers from acute stress disorder and anxiety. Additionally, the AAO notes that the applicant's husband stated that after the death of his first wife, he was "afraid that [he] might have a conversation with one of [his] hunting weapons." *Letter from* [REDACTED] dated June 11, 2006. The applicant's husband claims that he was very depressed after losing his first wife but the applicant "brought [him] back from the brink." *Letter from* [REDACTED], filed August 16, 2006. He states that if the applicant is removed from the United States, he "will be faced with two choices, suicide or renouncing [his] own country for another." *Id.* He claims that he has "no ties to Russia, [he does] not speak Russian, and [he knows] nothing of the government or social systems there." *Id.* The applicant's husband claims that moving to Russia would be "an excessive financial hardship" on him, especially since he will not be eligible for Medicare in Russia. *Id.*; see also *Counsel's Brief*, page 6, *supra*. In regards to the applicant's criminal activity, she is very remorseful and asks for forgiveness. See *Applicant's Affidavit*, dated June 15, 2006. The applicant claims that the first incident of theft occurred because she was pressured by her friends, and the second incident occurred because she just did not have enough money to pay for a couple of the items she needed. *Id.*

The record establishes that the applicant's spouse's mental and emotional problems would be exacerbated whether he separates from his spouse or whether he joins her in Russia, separated from his family. The AAO notes that the applicant's husband is currently 68-years-old, retired and living on a government pension. He claims that he would have difficulty adjusting to the culture in Russia, as he has lived his entire life in the

United States. Additionally, the applicant's husband suffered greatly with the death of his first wife, and his emotional and psychological health has declined since the applicant's Form I-601 was denied. The applicant's husband has even had suicidal ideations, with the thought of the applicant being removed to Russia. The AAO notes that the hardship in this case is beyond that which is normally experienced in cases of removal. Accordingly, the AAO finds that the applicant has established that her United States citizen husband would suffer extreme hardship if her waiver of inadmissibility application were denied.

The favorable factors presented by the applicant are the extreme hardship to her United States citizen husband, who depends on her for emotional support, and the lack of any other criminal convictions since her last conviction in 2002. In addition to counsel's brief, several declarations from friends, family, and her husband indicate that the applicant is a responsible wife and step-mother/grandmother. The record of proceedings does not establish that the admission of the applicant to the United States would be "contrary to the national welfare, safety, or security of the United States."

The unfavorable factors presented in the application are the applicant's convictions for theft in 1999 and 2002 and periods of unauthorized presence. The AAO notes that the applicant has not been charged with any crimes since her last conviction and the applicant's crime occurred more than 5 years ago, demonstrating the applicant's rehabilitation.

While the AAO does not condone her actions, the AAO finds that the favorable factors outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.