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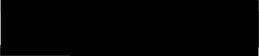
U.S. Citizenship  
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Services

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FILE:



Office: MOSCOW, RUSSIA

Date:

**FEB 15 2008**

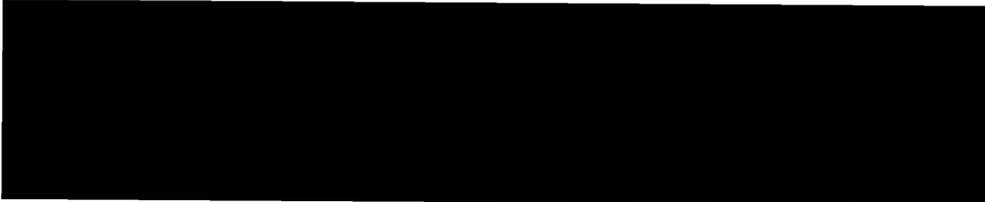
IN RE: Applicant:



APPLICATION:

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

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

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

The record reflects that the applicant, a citizen of Russia, initially entered the United States as a visitor in August 1993. The applicant was authorized to remain in the United States until April 22, 1994. The applicant remained in the United States beyond April 22, 1994 without authorization. He subsequently departed the United States in May 2006. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until his departure in May 2006. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant seeks a waiver of inadmissibility in order to return to the United States to reside with his U.S. citizen spouse in the United States.

The acting field office 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 Excludability (Form I-601) accordingly. *Decision of the Acting Field Office Director*, dated May 24, 2007.

In support of the appeal, the applicant submitted a letter and an affidavit from the applicant's spouse, a U.S. citizen; medical documentation with respect to the applicant's spouse; an affidavit from the applicant's mother, a lawful permanent resident; a statement from the applicant's spouse's brother; an offer of employment letter for the applicant; and a letter from an art gallery in Israel confirming that they have showcased the applicant's work in recent years. In addition, on October 31, 2007, counsel for the applicant submitted supplemental documentation in support of the appeal, including: a brief, dated October 31, 2007; a psychiatric evaluation dated October 5, 2007 with respect to the applicant's spouse; and an article about country conditions in Russia. The entire record was reviewed and considered in rendering this decision.

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

(B) Aliens Unlawfully Present.-

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

....

(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.

....

(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....

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Extreme hardship to the applicant is not a permissible consideration under the statute. In the present case, the applicant's spouse and mother are the only qualifying relatives, and hardship to the applicant or his extended family members cannot be considered, except as it may affect the applicant's spouse and/or mother.

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.

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).

Counsel first asserts that the applicant's spouse is experiencing emotional and psychological hardship due to the applicant's inadmissibility. As stated by counsel,

Currently, [redacted] [the applicant's spouse] is separated from her husband, [redacted] [the applicant], which causes her extreme hardship. [redacted] is acutely depressed and unable to function because of her separation from her husband....

In June, 2006, [redacted] left the United States and traveled to Russia with her husband, remaining there until July, 2007.... While in Russia, Ms. [redacted] was diagnosed with depression, anxiety and disordered adaptation.... Due to the seriousness of her mental health conditions, [redacted] was even suggested [sic] that in-patient hospitalization would be beneficial....

... [REDACTED] was previously married. Her first husband died and left Ms. [REDACTED] devastated. The Denial of her husband's I-601 Waiver is similar, in that the loss and pain from the separation has been devastating, and it is somewhat similar to the pain she felt with the loss of her first husband....

...Since returning [to the United States], [REDACTED] continues to experience symptoms of acute depression, including poor sleep and loss of appetite, and feelings of hopelessness/helplessness. According to the evaluation, Ms. [REDACTED] describes symptoms similar to Post Traumatic Stress Disorder regarding flashbacks to the loss of her first husband.... The current separation from her husband appears to be [the] primary stressor precipitating current symptoms.... Currently, [REDACTED] [is] diagnosed with major depressive disorder.... This disorder is characterized as recurrent and severe.... Ms. Rodriguez expresses vague suicidal ideation....

Besides significant mental health issues, the significant stress caused by the separation from her husband has caused [REDACTED] physical health to deteriorate as well. While in Russia, [REDACTED] was diagnosed with the following conditions:

- 1) cervical osteochondrosis, the pathological process of substitution of cartilage tissue, located between cervical vertebrae, with bone tissue resulting in pressing of bone tissue on nerves and blood-vessels, because of the complex influence of external and internal factors; this pressure leads finally to overload and decompensation of trophic supply for vertebral motion segments;
- 2) vertebrobasilar insufficiency, a condition resulting from cervical osteochondrosis when bone tissue presses on blood-vessels in foundation of the brain causing insufficient blood supply to these vessels, leading to various temporary and permanent symptoms, including dizziness, difficulty talking or controlling the movements of the mouth, numbness around the mouth, and weakness and numbness on one or both sides of the body;
- 3) initial signs of sensorineural deafness, an irreversible type of hearing loss that occurs when cochlear sensorineural elements or the cochlear nerve is damaged in some way...; and
- 4) stable tinnitus, a condition of ringing, swishing, or other type of noise that seems to originate in the ear....

Thus, [REDACTED]'s return to the United States did not 'resolve' her health problems, but in fact, significantly worsened them....

To corroborate the above-referenced statements, counsel has provided medical letters and evidence of medications prescribed to the applicant since 2006, both in Russia and in the United States. Moreover, Dr. [REDACTED] the applicant's spouse's psychiatrist, expounds on the applicant's spouse's conditions:

...Unable to remain in Russia due to multiple issues and stressors...patient felt forced to leave her husband and return to the United States. Since returning, patient states that she continues to experience symptoms of acute depression, including poor sleep and appetite, and feelings of hopelessness/helplessness; patient also describes symptoms similar to Post Traumatic Stress Disorder regarding flashbacks to the loss of her first husband. The current separation from her husband appears to be the primary stressor precipitating current symptoms. Additional stressors include inability of patient to find and maintain employment due to her depression....

Medical History is significant for Osteochondrosis of the cervical spine. Hearing loss due to the Osteochondrosis, Chronic pain, Tinnitus....

Recommendation: Cymbalta 30 mg a day for depression, anxiety and to target the chronic pain; titrate as needed up to 120 mg a day. Supportive Therapy...It is my opinion that the patients' poor functioning associated with depressive symptoms are mainly due to her separation from her husband. Although medication and supportive therapy would be helpful, removing the major stressor...would greatly aid in her recovery....

*Letter from*

*MD, South Beach Psychiatric Center, dated October 5, 2007.*

Finally, the applicant's spouse, in her own words, details the hardships she is facing without the applicant. As stated by the applicant's spouse,

...In 1998, my first husband, [REDACTED], died very suddenly and unexpectedly from a heart attack. He was only 28 years old. It is impossible for me to put into words the sorrow that filled me; my mourning for him was intense and very painful.... My heart was destroyed and I sunk to depths so low that I could not function or think clearly. I was unable to return to work right away and took an extended bereavement leave due to my loss of interest in life. I became so desperate that I had many suicidal thoughts because it seemed to me like the only way I could see my first husband again....

When [REDACTED] [the applicant] came into my life, something magical happened to me. I began to experience the feelings of love I thought I would never experience again. I felt safe and complete with [REDACTED] and I knew that he would be the man I would want to spend the rest of my life with.... I married my

husband...because I loved him, and his husband companionship was something that filled my heart and healed my wounds....

My husband...is very relevant to my entire health, and without him, my physical, psychological and mental health would rapidly and irreversibly deteriorate to the point that I would have no will to live, as I have already experienced from the separation of my first husband due to death.

*Affidavit of* [REDACTED] *dated June 25, 2007.*

Based on the unexpected and traumatic death of the applicant's spouse's first husband, the propensity for depression and deterioration and her need for her familial support network, and the continued medical and psychological problems, documented in the record, that she has encountered, and the stress and anxiety she is experiencing due to the applicant's absence, the AAO concludes that the applicant's spouse is suffering extreme hardship due to her spouse's absence. The applicant's spouse needs the emotional, psychological and physical support that the applicant would provide; the applicant's continued absence would be an extreme hardship for the applicant's spouse.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant based on the denial of the applicant's waiver request. In this case, the record indicates that the applicant's spouse did reside in Russia from June 2006 until July 2007 with the applicant. The applicant's spouse contends that her experience in Russia for the one-year period caused her extreme hardship, and as such, returning to Russia to reside with the applicant would also cause her extreme hardship.

As stated by the applicant's spouse,

...I do not feel safe or secure at all in Russia and I constantly fear for my safety, and security. Because I have olive skin and curly dark hair due to my Spanish heritage, I appear physically very different from the majority of the Russian population around me.... In addition, I only speak English and virtually no Russian, and as a result, I have been easily and quickly identified as foreigner, and more specifically, an American citizen.

As a result, I am terrified and am ostracized by the Russian people around me. I have witnessed several anti-American and Russian nationalism demonstrations here in Russia...they are violent and riotous....

On several occasions, I have seen signs expressing strong anti-American sentiments, including signs stating (translated) 'Yankees go home,' 'Americans are the cancer of the planet,' 'Killer Yankees, stop spreading your war and sins,' and 'Russians don't like Americans; the whole world doesn't like Americans,' and these experiences are downright terrifying.

I do not carry anything valuable with me anymore when I am on the streets because I was mugged once by unknown individuals (who tried to speak to me in Russian, but I did not understand). I also have been pick-pocketed on two occasions during my stay in Russia....

In addition, because I am an American citizen, I am required to register myself with the local city government in St. Petersburg. Despite my registration, I am constantly antagonized by local police officers (due to my physical appearance and American citizenship) to present proof of my city registration and my passport; sometimes it is the same police officer who asks me to present such documents at different points during the week.

On one occasion, I was required to pay a local police officer what he said was a 'fine' of 2000 rubles because I was not carrying my original passport with me. I do not want to speak up or even raise my voice to these local police officers because I am afraid that they will incarcerate me (which they threatened to do in the past because I carried a copy of my passport with me and not my original passport for fear of being mugged or pick-pocketed again)....

I am extremely terrified in Russia, and I confine myself to my and my husband's apartment for most of my time because I am utterly afraid what could happen to me, an American, if I go outside too often....

I want to be with my mother and my father again, and as I am already 35 years old and they are in the later stages of their lives, each minute with them grows more and more precious.... I miss my siblings dearly, and I want to be with my sister and her family, and my brother again in the United States. I want to live with Pavel [the applicant] in our peaceful home again on the first floor of my parents' house...and start to raise a family with him. I want to restart my career and experience success again....

*Affidavit of* [REDACTED] dated February 16, 2007.

The U.S. Department of State outlines the following concerns with respect to crime and medical care in Russia:

The U.S. Embassy and Consulates General continue to receive reports of unprovoked, violent harassment against racial and ethnic minorities, including well-publicized cases in which members of minorities have been beaten and in several instances, murdered. Travelers are urged to exercise caution in areas frequented by "skinhead" groups and wherever large crowds have gathered. Americans most at risk are those of African, South Asian, or East Asian descent, or those who, because of their complexion, are perceived to be from the Caucasus region or the Middle East. These Americans are also at risk for harassment by police authorities.

Visitors to Russia need to be alert to their surroundings. In large cities, they need to take the same precautions against assault, robbery, or pickpockets that they would take in any large U.S. city: keep billfolds in inner front pockets, carry purses tucked securely under arms, wear the shoulder strap of cameras or bags across the chest, walk away from the curb and carry purses away from the street.

The most vulnerable areas include underground walkways and the subway, overnight trains, train stations, airports, markets, tourist attractions, and restaurants.

Groups of children and adolescents have been aggressive in some cities, swarming victims, or assaulting and knocking them down. They frequently target persons who are perceived as vulnerable, especially elderly tourists or persons traveling alone. Some victims report that the attackers use knives. Persons carrying valuables in backpacks, in back pockets of pants and in coat pockets are especially vulnerable to pickpockets.

Foreigners who have been drinking alcohol are especially vulnerable to assault and robbery in or around nightclubs or bars, or on their way home. Some travelers have been drugged at bars, while others have taken strangers back to their lodgings, where they were drugged, robbed and/or assaulted.

In many cases involving stolen credit cards, thieves use them immediately. Victims of credit card or ATM card theft should report the theft to the credit card company or bank without delay.

Travelers are advised to be vigilant in bus and train stations and on public transport. Always watch for pickpockets in these areas. Bogus trolley inspectors, who aim to extort a bribe from individuals while checking for trolley tickets are also a threat. Travelers have generally found it safer to travel in groups organized by reputable tour agencies. Robberies may occur in taxis shared with strangers. Travelers should be aware that there are few registered taxi services in Russia and should be aware of the safety risks inherent in flagging down informal or “gypsy” cabs.

A common street scam in Russia is the “turkey drop” in which an individual “accidentally” drops the money on the ground in front of an intended victim, while a confederate either waits for the money to be picked up, or picks up the money himself and offers to split it with the pedestrian. The individual who dropped the currency returns, aggressively accusing both of stealing the money. This confrontation generally results in the pedestrian’s money being stolen.

Avoidance is the best defense. Do not get trapped into picking up the money, and walk quickly away from the scene.

To avoid highway crime, travelers should try not to drive at night, especially when alone, or sleep in vehicles along the road. Travelers should not, under any circumstances, pick up hitchhikers: they not only pose a threat to physical safety, but also put the driver in danger of being arrested for unwittingly transporting narcotics.

Extortion and corruption are common in the business environment. Threats of violence and acts of violence are commonly resorted to in business disputes. Organized criminal groups and sometimes local police target foreign businesses in many cities and have been known to demand protection money. Many Western firms hire security services that have improved their overall security, although this is no guarantee. Small businesses are particularly vulnerable. U.S. citizens are encouraged to report all extortion attempts to the Russian authorities and to inform consular officials at the U.S. Embassy or nearest Consulate General.

Travelers should be aware that certain activities that would be normal business activities in the United States and other countries are either illegal under the Russian legal code or are considered suspect by the FSB (Federal Security Service). U.S. citizens should be particularly aware of potential risks involved in any commercial activity with the Russian military-industrial complex, including research institutes, design bureaus, production facilities or other high technology, government-related institutions. Any misunderstanding or dispute in such transactions can attract the involvement of the security services and lead to investigation or prosecution for espionage. Rules governing the treatment of information remain poorly defined.

It is not uncommon for foreigners in general to become victims of harassment, mistreatment and extortion by law enforcement and other officials. Police do not need to show probable cause in order to stop, question or detain individuals. If stopped, travelers should try to obtain, if safe to do so, the officer's name, badge number, and patrol car number, and note where the stop happened, as this information assists local officials in identifying the perpetrators. Authorities are concerned about these incidents and have cooperated in investigating such cases. Travelers should report crimes to the U.S. Embassy or the nearest Consulate General....

Medical care in most localities is below Western standards; shortages of medical supplies, differing practice standards and the lack of comprehensive primary

care all combine to make the medical system difficult to negotiate as well as suspect. The few facilities in Moscow and St. Petersburg that approach acceptable standards do not necessarily accept all cases (i.e., they may not be licensed to treat trauma, infectious disease or maternity cases). Access to these facilities usually requires cash or credit card payment at Western rates at the time of service.

*Country Specific Information-Russian Federation, U.S. Department of State, Bureau of Consular Affairs, dated December 26, 2007.*

Based on the concerns outlined above by the applicant's spouse with respect to her own safety and medical care in Russia, her inability to read, write and speak the Russian language, her feelings of loss because she is unable to be close to her parents and siblings, and the documented medical and psychological problems that she has encountered while residing in Russia for a one-year period, the AAO concludes that the applicant's spouse would face hardship beyond that normally expected of one facing relocation abroad based on the removal of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Russia to reside with the applicant. 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 he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship the applicant's spouse would face if the applicant were to remain in Russia, regardless of whether the applicant's spouse relocates or remains in the United States, the U.S. citizenship or lawful permanent status of the applicant's family members, and the applicant's apparent lack of a criminal record. The unfavorable factors in this matter are periods of unauthorized presence in the United States.

While the AAO does not condone the applicant's actions, the AAO finds that the favorable factors, in particular the extreme hardship imposed on the applicant's spouse as a result of his inadmissibility, outweigh the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of

the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.<sup>1</sup>

**ORDER:** The appeal is sustained. The waiver application is approved.

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<sup>1</sup> The record indicates that counsel for the applicant submitted a second Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) on December 4, 2007. As the instant appeal is being sustained by the AAO and the I-601 is being approved, this second Form I-601 submission is no longer necessary or relevant.