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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

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H3

FILE:

Office: VIENNA, AUSTRIA

Date:

JAN 03 2008

IN RE:

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) and under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Officer-in-Charge, Vienna, Austria. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Lithuania who 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 a period of one year or more and pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The officer-in-charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to her U.S. citizen spouse and the application was denied accordingly. *Decision of the Officer-in-Charge*, dated December 4, 2006.

On appeal, the applicant's spouse states that he became sick while visiting the applicant and he needs her to take care of him in the United States. *Letter in Support of Appeal*, received December 14, 2007.

The record includes, but is not limited to, the applicant's spouse's letters and his medical records. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States in or about April 1996 and departed in or about April 2002. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until April 2002, the date of her departure from the United States. The applicant also misrepresented her dates of unlawful presence on a nonimmigrant visa application and before a consular officer. As a result of her unlawful presence and prior misrepresentations, the applicant is inadmissible to the United States.

Section 212(a)(9)(B) 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)(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 [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.

Therefore, the applicant requires waivers under sections 212(a)(9)(B)(v) and 212(i) of the Act.

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. 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; 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in Lithuania or in the event that he remains in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he resides in Lithuania. The record reflects that the applicant's spouse is seventy-six years old. The applicant's spouse has a history of cardiac arrhythmia, underwent six months of chemotherapy for Hodgkin's

disease in 2002 and experiences arrhythmia once or twice a month. *Letter from* [REDACTED] *M.D.*, at 1, dated February 3, 2006. The record reflects that the applicant's spouse is in need of constant care due to the following health problems: non-Hodgkin's large B cell lymphoma; Hodgkin's lymphoma 1<sup>st</sup>-2<sup>nd</sup> stage B. remission; coronary heart disease; primary arterial hypertension III; hypertensive cardiopathy; lung edema; paroxysms; hypermetropia OU; presbyopia OU; and prostatic hyperplasia. *Letter from* [REDACTED] *Physician*, dated December 13, 2006. The record reflects that the applicant's spouse was given intense chemotherapy in the past. *Letter from* [REDACTED] *M.D.*, dated February 26, 2002. The applicant's spouse is apparently is being evaluated for recurrence of Hodgkin's in his neck. *Letter from* [REDACTED]

*M.D.* The applicant's spouse states that his medical insurance does not cover him in Lithuania. *Letter in Support of Appeal*. Considering the applicant's spouse's age, his numerous and serious health issues, and his lack of medical insurance coverage in Lithuania, the AAO finds that extreme hardship has been established in the event that the applicant's spouse resides to Lithuania.

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. The applicant's spouse states that he was hospitalized on November 26, 2006 with numerous problems and he is still convalescing at home. *Applicant's Spouse's Letter*, dated December 17, 2006. The applicant's spouse states that he needs his wife to be with him in the United States to take care of him. *Letter in Support of Appeal*. As mentioned, the applicant's spouse has the following health problems: non-Hodgkin's large B cell lymphoma; Hodgkin's lymphoma 1<sup>st</sup>-2<sup>nd</sup> stage B. remission; coronary heart disease; primary arterial hypertension III; hypertensive cardiopathy; lung edema; paroxysms; hypermetropia OU; presbyopia OU; and prostatic hyperplasia. *Letter from* [REDACTED], *Physician*. Based on the applicant's spouse's age and his numerous and serious health issues, the AAO finds that extreme hardship has been established in the event that the applicant's spouse remains in the United States without the applicant.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, “[B]alance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Id.* at 300.

The main adverse factors in the present case are the applicant’s misrepresentations and unlawful presence.

The favorable factors include the presence of the applicant’s U.S. citizen spouse, the lack of a criminal record and extreme hardship to her spouse.

The AAO finds that the applicant’s violations are serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.