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U.S. Citizenship
and Immigration
Services

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FILE:



Office: MOSCOW, RUSSIA

Date: **JAN 09 2008**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v)
of the Immigration and Nationality Act (the 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 Officer-in-Charge (OIC), Moscow, Russia, and 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)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more subsequent to April 1, 1997. She seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her U.S. citizen spouse.

The record reflects that the applicant was first admitted to the United States on May 20, 1996 in K-1 status with a period of authorized stay expiring August 19, 1996. The applicant married her then fiancé, [REDACTED], on August 10, 1996 in the United States. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on August 23, 1996. The applicant and [REDACTED] became divorced on October 16, 1998. On April 27, 1999, the applicant married her spouse, [REDACTED], a naturalized U.S. citizen, in the United States. In light of her divorce, the applicant's adjustment application was denied on February 4, 2000.

On May 12, 2000, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589). On June 28, 2000, the applicant was referred to the immigration court for removal proceedings. On January 10, 2001, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf. The petition was approved on April 9, 2002. On October 23, 2002, the immigration judge denied the applicant's request for voluntary departure and ordered the applicant removed. The applicant's requests for asylum and withholding of removal were withdrawn and her adjustment application was pretermitted. The applicant filed an appeal of the judge's decision with the Board of Immigration Appeals (BIA) on November 21, 2002. On March 24, 2004, the BIA sustained the applicant's appeal and granted the applicant voluntary departure. On April 21, 2004, the applicant departed the United States for Russia.

The applicant filed an Application for Immigrant Visa (Form DS-230) in Moscow, Russia on May 5, 2005. The applicant filed an Application for Waiver of Grounds of Excludability on October 6, 2005.

The OIC determined that the applicant was inadmissible under section 212(a)(9)(B)(i)(II) for having been unlawfully present in the United States from the date of her divorce on October 16, 1998 to the date she filed her asylum application on May 12, 2000, a period in excess of one year. *Decision of OIC*, dated November 14, 2005. The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Id.*

On appeal, counsel submits a brief in which he summarizes the evidence and contends that it demonstrates that denial of the waiver application has resulted in extreme hardship to the applicant's spouse. Counsel also submits a letter from the applicant's spouse in which he indicates that since the filing of the waiver application, the applicant's children have departed Russia to be with the applicant's spouse in the United States. The applicant's spouse states in the letter that the denial of the applicant's waiver application has "created a debilitating financial, medical and personal hardship" for him and his family. He maintains that as a direct result of his separation from his wife, he now suffers from depression and stress that has led to a life-threatening increase in his blood pressure. He contends that the separation has led to "formidable" expenses,

as the applicant has been unable to find work in Russia to support herself. He asserts that he has also lost income in his work as a realtor because of the time he has had to spend trying to resolve the applicant's immigration problems and caring for his stepson and son.

The appeal contains a brief from counsel; a letter from the applicant's spouse; a letter from the applicant's son Aleksandr; and a letter from [REDACTED]. The record also contains a statement from the applicant's spouse submitted with the waiver application along with tax and other financial records submitted with other applications and petitions. The entire record has been reviewed in rendering a decision on the appeal.

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

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

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, or

(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 [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.

The record reflects, as indicated by the OIC, that the applicant's initial adjustment application was voided by her divorce on October 16, 1998. The applicant failed to maintain lawful presence from this date until she filed her asylum application on May 12, 2000. The applicant is now seeking re-admission to the United States. Therefore, the applicant accrued unlawful presence from October 16, 1998 through May 12, 2000, a period in excess of one year.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(a)(9)(B)(v) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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, 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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

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).

U.S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

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 faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant's spouse suffers emotionally as a result of separation from the applicant. However, the applicant has submitted insufficient evidence showing that the psychological consequences of separation in this case constitute extreme hardship when considered with other hardship factors, or that the applicant's spouse would suffer hardship if he relocated to Russia to be with the applicant.

The letter from the applicant's spouse's physician does indicate that the applicant's spouse's hypertension has recently been exacerbated, but it does not support the applicant's spouse's claim that the condition is life threatening. Likewise, though the applicant's spouse has submitted a description of his expenses, he has not submitted sufficient evidence showing that the financial impact of separation from the applicant rises to the level of extreme hardship. The evidence shows that the applicant's spouse is employed and is able to meet his financial obligations. The applicant's spouse has asserted that the applicant is unable to find work in Russia. Although the statements by the applicant's spouse are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The hardship described by the applicant's spouse is the typical result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

Finally, the AAO notes that the applicant has failed to submit evidence showing that her spouse would suffer extreme hardship if he relocated to Russia.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act. 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 application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.