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20 Mass. Ave., N.W., Rm. A3042
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U.S. Citizenship
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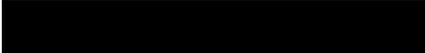
FILE:



Office: MOSCOW, RUSSIA

Date:

IN RE:



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

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Moscow, Russia. The matter 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 § 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 and seeking readmission within 10 years of her last departure from the United States. The applicant is the fiancée of a U.S. citizen, is the beneficiary of an approved petition for alien fiancée, and she seeks a waiver of inadmissibility in order to reside in the United States with the petitioner.

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 fiancé. The application was denied accordingly. On appeal, counsel asserts that the applicant had submitted the original waiver application pro se, and that she did not understand the importance of submitting proper documentation. On appeal, counsel contends that the applicant's U.S. citizen fiancé will suffer extreme hardship if the applicant is not admitted to the United States, on account of his health and financial difficulties, and due to emotional suffering. In support of these assertions, amongst other documentation, counsel submits statements by the applicant and her fiancé and a copy of a psychological evaluation for the applicant's fiancé.

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.

In the present application, the record indicates that the applicant entered the United States in September 1998 and was admitted as a visitor with authorization to stay for six months. The applicant remained in the United States beyond her authorized period of stay, and departed the United States in September 2001. The applicant accrued unlawful presence from approximately April 1999 until September 2001. She now seeks admission within 10 years of her departure from the United States. The applicant is, therefore, inadmissible to the United States under § 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A § 212(a)(9)(B)(v) waiver of the bar to admission resulting from § 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Pursuant to guidance found in the Foreign Affairs Manual, U.S. citizen fiancés are treated as if they were already married to the alien beneficiary of the fiancé petition. Hardship the alien herself experiences upon deportation is irrelevant to § 212(a)(9)(B)(v) waiver proceedings. 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).

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 pursuant to section 212(i) of the Act. 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.

Counsel asserts that the applicant's fiancé will face extreme hardship if the applicant is not permitted to enter the United States in order for the couple to marry and reside together. In his affidavit dated January 31, 2005, the applicant's fiancé states that he has felt obligated to abandon his private psychology practice, thus reducing his income by about 25 per cent, in order to visit the applicant regularly. The documentation on the record, however, does not demonstrate that the applicant's fiancé has been unable to make necessary financial adjustments or that his salary as a university professor is insufficient to meet his needs. The record does not establish that the applicant's fiancé is suffering severe economic hardship on account of the applicant's inadmissibility.

The applicant's fiancé also writes that the separation from the applicant causes him a great deal of emotional stress. He is concerned about the applicant's welfare, because she has had health problems and difficulty finding employment. He indicates that he feels despair. In support of this factor, counsel submits a psychological evaluation completed by [REDACTED] Psy.D., dated January 3, 2005. Dr. [REDACTED] performed several standard psychological tests, reviewed the applicant's fiancé's background material, and conducted a clinical interview of unknown duration with the applicant's fiancé. Dr. [REDACTED] discusses the applicant's fiancé's personal history, his health problems, and his current emotional difficulties, all as reported by the applicant's fiancé. Dr. [REDACTED] states further that the applicant's fiancé reported experiencing distressing thoughts, decreased sleep, diminished concentration, anxiety, shortness of breath, muscle tension,

and a depressed mood. Dr. [REDACTED] draws the conclusion, based on the test results and personal, clinical observation, that the applicant's fiancé is experiencing "a significant level of affective distress, with mixed depressive and anxious features." Dr. [REDACTED] expresses the opinion that "[t]here is no doubt that the Petitioner's life would be utterly shattered should the Beneficiary be declared inadmissible to the United States."

The record does not indicate that Dr. [REDACTED] ever conducted therapy with the applicant's fiancé, nor was any psychiatric or medical treatment or psychological therapy recommended in response to the applicant's fiancé's current symptoms. Dr. [REDACTED] evaluation does not indicate that the applicant's fiancé's current anxiety is unmanageable, or that the applicant's fiancé is at risk of becoming unable to function on account of his distress. The AAO acknowledges that the applicant's fiancé is experiencing a significant level of distress; however, his emotional state is not uncommon to individuals in similar situations. In other words, the applicant's fiancé's reaction and symptoms are not extreme when compared to those of other persons separated from loved ones due to the inadmissibility of the latter.

In their statements, the applicant and her fiancé discuss the latter's health problems, including scoliosis and prostate cancer. The applicant notes that her fiancé relies on her in his effort to deal with problems he has experienced with physical intimacy resulting from his prostate surgery. The applicant's fiancé's health concerns may indeed be of a serious nature; however, the record lacks any medical documentation regarding these concerns. Hence, the record does not establish that the applicant's absence causes her fiancé severe hardship in view of his medical conditions.

Moreover, the record does not contain documentation regarding the availability of medical care in Russia, although the applicant's fiancé expresses concern that health care in that country is not of the standard found in the United States. In addition, while the applicant indicates that she has great difficulty finding suitable employment, the record contains no evidence regarding her fiancé's prospects, should he choose to relocate to Russia. In sum, there is no documentation to establish that the applicant's fiancé would experience extreme hardship if he moves to Russia to join the applicant.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's fiancé endures hardship as a result of separation from the applicant. However, his situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's fiancé by the applicant's inadmissibility to the United States. 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 § 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* § 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.