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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: MOSCOW, RUSSIA Date: AUG 02 2004

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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, 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 under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse.

The officer in charge 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 Officer in Charge*, dated November 28, 2003.

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of fact and law in denying the application for waiver by analyzing each humanitarian factor separately and relying on separate instances of case law and precedence instead of taking into account the totality of the circumstances. *Form I-290B*, dated December 19, 2003.

In support of these assertions, counsel submits a brief, dated January 16, 2004; a copy of the naturalization certificate of the applicant's husband; a copy of the photo identification page of the United States passport issued to the applicant's husband; a copy of the certificate of marriage for the applicant and her spouse; an affidavit of the applicant's husband, dated October 22, 2002; copies of credit card statements issued to the applicant's husband and copies of email correspondence regarding the application between CIS and counsel. The record also contains a letter from a physician treating the applicant's husband, dated September 19, 2002 and a copy of a deed for property owned by the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that the applicant presented herself for admission as a visitor to the United States on September 22, 1996 at which time she made a willful misrepresentation of a material fact by failing to indicate that she was married to a United States citizen.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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, 565-566 (BIA 1999) provides a list of factors the Bureau 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 contends that the applicant's spouse would suffer extreme hardship as a result of departing from the United States as his immediate family members, with whom he has close relationships, reside in the United States. *Brief in Support of the Appeal of the Decision of USCIS to Deny the I-601 Waiver*, dated January 16, 2004. Counsel asserts that the applicant's spouse maintains lucrative employment in the United States and that his skills as a computer programmer would be useless in Russia. *Id.* at 5-6. Counsel emphasizes that the applicant's husband fled his native country and was granted refugee status in the United States in 1994. *Id.*

Although counsel offers evidence of extreme hardship to the applicant's husband if he relocates to Russia, counsel does not establish extreme hardship to the applicant's spouse if he remains in the United States maintaining his employment, safe harbor from persecution and close proximity to other family members. Counsel contends that the applicant's husband suffers financial hardship as a result of the applicant's inadmissibility to the United States as the applicant does not work and her husband serves as the sole financial provider for the applicant and their two children. *Id.* at 3. As noted in the decision of the officer in charge, "Until the purchase of his home ..., there is no evidence of economic hardship. The economic hardship that arose after the purchase of the home is not based on .. separation .. but on personal financ[ial] decisions." *Decision of the Officer in Charge*. The AAO acknowledges that the applicant and her spouse may be required to alter their lifestyle as a result of the applicant's inadmissibility. The record, however, does not establish that the applicant's spouse is unable to maintain his financial situation as a result of the applicant's absence from the United States. Further, the record does not establish the length of time required for the applicant to complete her studies and whether or not she will be able to engage in employment upon completion of her studies. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel also contends that the applicant's spouse endures emotional hardship as a result of separation from the applicant. *Affidavit of Dmitry Chernyshev*, dated October 22, 2002. Counsel submits a letter from a physician who verifies that the applicant's spouse was treated for cardiac arrhythmia and symptoms of paralysis as a result of emotional distress. *Letter from Robert Yodashkin, MD*, dated September 19, 2002. The letter from Dr. Yodashkin indicates that the applicant's spouse was treated in his office on one occasion. The AAO notes that the record does not evidence ongoing treatment undergone by the applicant's husband for these symptoms. A finding of extreme hardship cannot be premised on an isolated occurrence. The record fails to provide a basis for a finding of extreme emotional hardship suffered by the applicant's husband as a result of the applicant's inadmissibility to the United States. The AAO recognizes that the applicant's husband endures hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record.

The AAO further notes that the petitions filed by the applicant's spouse on behalf of the couple's children continue to be processed by CIS. If and when these petitions are approved, the applicant's children will be able to reside in the United States with the applicant's spouse thereby alleviating a source of his professed emotional distress. *Affidavit of Dmitry Chernyshev* ("I feel that I am missing their entire childhood and that they do not know me. ... It troubles me terribly that my children are deprived of the love and attention that I know their grandparents and uncle would shower upon them were they in the United States.")

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused 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 section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely 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.