identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

PUBLIC COPY

U.S. Citizenship and Immigration Services

H2

[redacted]

FILE: [redacted] Office: BOSTON, MA Date: JUN 30 2009

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of the Ukraine and a citizen of Russia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having entered the United States through fraud or the willful misrepresentation of a material fact. The applicant is wife of a U.S. citizen and seeks a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The District Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, or that a favorable exercise of discretion was warranted, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), on August 23, 2006.

On appeal, the applicant's representative asserts that the District Director did not give full consideration to the evidence presented in support of the waiver application as he believed he lacked jurisdiction to adjudicate the application. Counsel also asserts that the District Director failed to apply the correct legal standard in assessing extreme hardship.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (i) **In general.** 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 chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as set forth in section 212(i):

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant 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 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 establishes that the applicant entered the United States in May 2000 with a B1/B2 visa procured by submitting a false visa application. On October 20, 2000, she was convicted under 18 U.S.C. § 1546(a) of fraud, forgery and misuse of visas, permits and other immigration documents. The applicant is inadmissible pursuant to section 212(a)(6)(C) of the Act for having entered the United States by fraud or willfully misrepresenting a material fact.

A waiver of inadmissibility under section 212(i) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, in this case, the applicant's U.S.

citizen spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted.

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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

The record of proceeding contains the applicant's representative's brief, statements from the applicant and her spouse, medical statements concerning the applicant's spouse's mental health, copies of tax documentation for the applicant's spouse, a copy of the mortgage for the applicant's spouse's property, photographs of the applicant and her spouse, a divorce decree for the applicant, a marriage certificate for the applicant and her spouse, letters of employment for the applicant and her spouse, and statements from family and friends of the applicant and her spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal, the applicant's representative asserts that the applicant's spouse suffers from dysthemia and generalized anxiety disorder, and that, if the applicant is excluded from the United States, there is a risk that the applicant's spouse's condition could turn into Major Depressive Disorder which carries a significant risk of suicide. In support of her assertion, the applicant's representative refers to letters written by [redacted] of the Capital Region Family Health Center, and Family Practice Physician [redacted] of Mt. Mooselaukee Health Center. [redacted] states that the applicant's spouse has suffered from dysthemia "for many years" and has worked to treat his condition without much success, and that by the applicant's spouse's report "it was not until [the applicant's spouse] met his wife that he was able to emerge from many of the depressive symptoms." He further indicates that he believes that separation from the applicant would

significantly affect the applicant's spouse's mental health and his condition would deteriorate, requiring intensive counseling and potential pharmacological therapy. [redacted] states that he has known the applicant since February 9, 2004, and that he suffers from dysthemia and generalized anxiety disorder. He discusses the symptoms of dysthemia and anxiety disorder generally, and then states that there is a potential risk that the exclusion of the applicant would exacerbate the applicant's spouse's condition and lead to Major Depressive Disorder which carries a significant risk of suicide.

Although both doctors state that the applicant's spouse has a history of dysthemia (and anxiety disorder in the case of [redacted]), neither physician is established by the record as a mental health practitioner. The AAO also observes that the doctors' letters fail to address the applicant's spouse's specific symptoms, their severity or how they affect his ability to function on a daily basis. Further, the doctors' letters fail to indicate what specific medications are being taken by the applicant's spouse for his condition, although [redacted] indicates that he is on a medication regimen. The AAO also notes that [redacted] does not state that the applicant's spouse is his patient or that he has medically evaluated him. The AAO accepts that, in the opinion of these physicians, the applicant's spouse suffers from dysthemia and anxiety disorder. However, it finds the fact that neither is a licensed mental health practitioner and that neither has offered any medical detail concerning the applicant's spouse's mental health to undercut their conclusions regarding the impact of the applicant's removal on her spouse's mental health, rendering them speculative and, thus, of diminished value to a determination of extreme hardship. Accordingly, the AAO does not find the record to contain sufficient evidence to establish that the applicant's spouse would suffer extreme emotional hardship if the applicant were to be excluded and he remained in the United States.

The applicant must also establish that her spouse would experience extreme hardship if he relocated to Russia with her. Counsel states on appeal that the applicant's spouse does not speak Russian, and would be unable to find employment in Russia. Counsel further asserts that the applicant's spouse would be unable to earn a living in Russia as a result of his medical condition, and that he and the applicant would have no place to live or any means of supporting themselves. While, as previously discussed, the state of the applicant's spouse's mental health is not clear from the record, the AAO acknowledges that the applicant's spouse will not have any immediate family in Russia, does not speak Russian, is unfamiliar with Russian culture and would have difficulty in obtaining employment. When considered in the aggregate, the AAO finds these factors to establish that relocating to Russia with the applicant would result in extreme hardship to the applicant's spouse.

However, as the record does not also demonstrate extreme hardship to the applicant's spouse if he remains in the United States, the applicant has not established that her spouse would face extreme hardship if she is refused admission. The AAO recognizes that the applicant's spouse will suffer hardship as a result of the applicant's inadmissibility, but the record fails to distinguish his hardship from that normally associated with removal. Accordingly, it does not rise to the level of "extreme" as informed by relevant precedent. 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.

In this case, the applicant has failed to establish extreme hardship to her U.S. citizen spouse. As the applicant is 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.