U.S. Department of Homeland Security
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Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: MOSCOW, RUSSIA Date: JAN 12 2009

IN RE: Applicant: [redacted]

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)

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Michael Grissom

John F. Grissom, Acting 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 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 record reflects that the applicant is the spouse of a United States citizen and that she is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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), in order to reside in the United States with her United States citizen spouse.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on her spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-In-Charge*, dated June 28, 2006.

On appeal, the applicant, through counsel, asserts that the OIC erred "in applying facts to the law." *Form I-290B*, filed August 10, 2006.

The record includes, but is not limited to, a letter from counsel, psychological evaluations on the applicant's husband, and letters of recommendations. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

> Aliens Unlawfully Present.-
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> (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (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.
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> . . . .
>
> (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 indicates that on December 16, 1997, [redacted] filed a Petition for Alien Fiancé(e) (Form I-129F) on behalf of the applicant. On February 19, 1998, the applicant's Form I-129F was approved. On June 3, 1998, the applicant entered the United States on a K-1 nonimmigrant visa. The applicant failed to marry [redacted] and instead on August 3, 2000, she married [redacted], a United States citizen. On November 26, 2002, the applicant's husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On February 24, 2003, the applicant's husband filed another Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On April 23, 2003, the applicant's first Form I-130 was approved. On February 5, 2004, the District Director, San Francisco, California denied the applicant's Form I-485. On October 7, 2004, a Notice to Appear (NTA) was issued against the applicant. On April 14, 2005, an immigration judge granted the applicant voluntary departure to depart the United States by August 12, 2005. On May 10, 2005, the applicant's husband withdrew the second Form I-130. On July 7, 2005, the applicant departed the United States. On February 13, 2006, the applicant filed a Form I-601. On June 28, 2006, the OIC denied the applicant's Form I-601, finding that the applicant accrued more than 365 days of unlawful presence and that she failed to establish the existence of extreme hardship to her spouse. The OIC stated the applicant accrued unlawful presence from September 1, 1998, the date her authorization to remain in the United States expired, until July 7, 2005, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) 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 applicant herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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 United States citizen husband is suffering extreme hardship by being separated from the applicant. [redacted] diagnosed the applicant's husband with Obsessive-Compulsive Disorder, Major Depressive Disorder, and Partner Relational Problems. *See psychological evaluation by* [redacted], dated July 20, 2006. [redacted] claims that "[e]ven with medication and counseling [the applicant's husband's] personal and relation loss is profound.... [The applicant's husband's] emergent feelings of anxiety, depression, anger and being overwhelmed are likely to persist as long as he lives alone." *Id.* [redacted] states the applicant's husband "presents with a serious risk for suicide." *Id.* Additionally, [redacted] states "[i]t is clear that not only is [the applicant's husband] dependent on his wife as a partner and a co-worker, but he also needs her to feel good about himself in ways beyond how most men need their wives." *Id.* The AAO notes that since the applicant's husband anxiety and depression are primarily caused by the separation from the applicant, if the applicant's husband joins the applicant in Russia then the anxiety and depression would presumably no longer be an issue. Additionally, the AAO notes that the applicant failed to establish that her husband has no transferable skills that would aid him in obtaining a job in Russia. Furthermore, the AAO notes that the applicant failed to provide a statement or an affidavit from her husband regarding the extreme hardship he has been suffering since the applicant departed the United States or that he would suffer if he relocated to Russia to be with her.

Nevertheless, the AAO finds that the applicant has demonstrated extreme hardship to her husband if he remains in the United States without the applicant; however, it has not been established that the applicant's husband could not join the applicant in Russia. The AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to her husband's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to her husband if he joins her in Russia.

In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's husband will endure, and has endured, hardship as a result of separation from the applicant; however, he has not demonstrated extreme hardship if he were to join the applicant in Russia.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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)(9)(B) 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.