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U.S. Department of Homeland Security  
20 Massachusetts Avenue N.W., Rm. 3000  
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U.S. Citizenship  
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Services

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FILE:



Office: MOSCOW, RUSSIA

Date:

DEC 24 2008

IN RE:

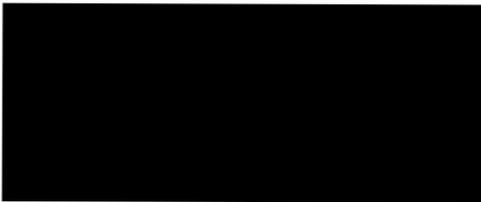
Applicant:



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:



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).

A handwritten signature in cursive script, appearing to read "Michael Shumy".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-In-Charge (OIC), Moscow, Russia, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Russia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for willfully misrepresenting a material fact on her nonimmigrant visa application. The record indicates that the applicant is married to a lawful permanent resident of the United States. The applicant is also the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her naturalized United States citizen daughter. The applicant 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 lawful permanent resident husband, United States citizen daughter, and United States citizen grandchildren.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on her husband and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-In-Charge*, dated June 23, 2006.

On appeal, the applicant, through counsel, asserts that the applicant's waiver was erroneously denied by the OIC "because they failed to consider numerous supporting documents that this applicant submitted to overcome the burden of establishing extreme hardship." *Form I-290B*, filed July 5, 2006.

The record includes, but is not limited to, letters from the applicant's husband and daughter, and a letter from [REDACTED]. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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 Act is inadmissible.

....

- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (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

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 [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 AAO notes that the record contains several references to the hardship that the applicant's United States citizen daughter would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's daughter will not be considered, except as it may cause hardship to the applicant's spouse.

The record reflects that in March 1996, the applicant filed a visa application and failed to indicate that her daughter resided in the United States. On March 29, 1996, the applicant received a three-year multiple entry visa. On August 30, 1999, the applicant applied for a B-2 nonimmigrant visa, which was denied. On September 1, 1999, the applicant applied for a B-2 nonimmigrant visa, which was denied. On July 5, 2002, the applicant's United States citizen daughter filed a Form I-130 on behalf of the applicant. On November 9, 2004, the applicant's Form I-130 was approved. On August 9, 2005, the applicant applied for a B-2 nonimmigrant visa, which was denied. On the same day, the applicant filed a Form I-601. On June 23, 2006, the OIC denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her qualifying relative.

The AAO finds that the applicant willfully misrepresented a material fact on her nonimmigrant visa application, when she failed to indicate that her daughter resided in the United States. The AAO notes that when a misrepresentation is committed it must be material. A misrepresentation is generally material only if by it the alien received a benefit for which she would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964); *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961). According to the Department of State's Foreign Affairs Manual and the Board of Immigration Appeals (Board), a misrepresentation is material if either: (1) The alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry that is relevant to the alien's eligibility and that might well have resulted in a proper determination that she be excluded. *9 FAM 40.63 N61*; *see also Matter of S- and B-C-*, *supra*. Had the applicant mentioned that her daughter resided in the United States, her application for a non-immigrant visa may have been denied on the basis that the applicant was an intending immigrant. Therefore, the omission of the applicant's family ties in the United States on her nonimmigrant visa application is a material misrepresentation and she is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's lawful permanent resident spouse. 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 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.

On January 11, 2003, the applicant's daughter was involved in a car accident. *See letter from* [REDACTED] [REDACTED] M.D., dated July 6, 2006. The applicant's daughter states that after being in the car accident where she almost lost her life, she "need[s] [her] mother's help and presence." *Letter from* [REDACTED] [REDACTED] dated August 17, 2005. [REDACTED] states the applicant's daughter is

getting physical therapy sessions for her injured neck. She is still getting physical therapy because her pain has recurrent nature. The [applicant's daughter's] ability to perform house work is remarkably restrained. She will benefit a great deal from somebody's assistance. [He] think[s] the best candidate for this is the [applicant].

*Letter from* [REDACTED], *supra*.

The applicant's husband states the applicant's "daughter and grandsons need her as much as [he] [does] and [they] all wish to be together and live the rest of [their] lives next to each other." *Letter from* [REDACTED] [REDACTED] dated May 2, 2006. The AAO notes that as noted above, the applicant's daughter is not a qualifying relative for a waiver under section 212(i) of the Act. The applicant's husband states he has "spent last 45 years of [his] life with [the applicant]....For her, as well as for [him] it is extremely hard to live apart....[The applicant], just like all [his] children, is an essential element of [his] life, without which [he] cannot live or plan for future." *Id.* The AAO notes that the applicant's husband did not provide a statement regarding what, if any, hardship he would suffer if he joined the applicant in Russia. Additionally, the AAO notes that the applicant's husband is a native of Russia, who spent his formative years in Russia, he writes and speaks Russian, and it has not been established that the applicant and her husband have no family ties in Russia. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined the applicant in Russia.

In addition, the applicant does not establish extreme hardship to the applicant's spouse if he remains in the United States, in close proximity to their daughter and grandchildren. As a lawful permanent resident of the United States, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that the applicant is currently employed as a doctor and the record fails to demonstrate that she 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 applicant's husband faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the Board has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965).

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 lawful permanent resident husband has endured 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 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 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)(i) 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.