

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H₂



FILE:



Office: NEW YORK, NY

Date:

SEP 15 2008

IN RE:

Applicant:



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Sections 212(i) of the Immigration and Nationality Act, 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the Form I-601 will be approved.

The record reflects that the applicant is a native and citizen of Russia. The applicant was found to be inadmissible to the United States pursuant to 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 procured admission into the United States by fraud or willfully misrepresenting a material fact. The applicant presently seeks a waiver of her ground of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded the applicant had failed to establish that her U.S. citizen husband would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601 was denied accordingly.

On appeal, the applicant asserts that the district director abused her discretion in the present matter, and that a psychological report and other evidence contained in the record establish that the applicant's husband (Mr. [REDACTED]) would suffer extreme emotional and financial hardship if the applicant were denied admission into the United States.

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

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.

The record reflects that the applicant procured lawful permanent resident status in the United States by obtaining an immigrant visa as a special religious worker through fraud. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides in pertinent part that:

(1) The Attorney General [now Secretary, Department 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 applicant married a U.S. citizen on March 29, 2001. The applicant's husband is thus a qualifying family member for purposes of section 212(i) of the Act. It is noted that U.S. citizen and lawful permanent resident children are not qualifying relatives under section 212(i) of the Act. Any hardship claim pertaining to the applicant's child may therefore only be considered to the extent that it causes extreme hardship to the applicant's husband.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) deemed the following factors to be relevant in determining extreme hardship to a qualifying relative:

[T]he 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.

The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996.) Court decisions have repeatedly held that the common results of deportation or exclusion [now removal or inadmissibility] are insufficient to prove extreme hardship. *Perez v. INS*, *supra*. See also, *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991.)

U.S. courts have repeatedly upheld the principal that less weight is given to equities acquired by an alien after an order of deportation has been issued. *Garcia-Lopez v. INS*, 923 F.2d 72, 74 (7th Cir. 1991.) The equity of a marriage and the weight given to any hardship to the spouse is diminished if the parties married after the commencement of deportation proceedings, and with knowledge that the alien might be deported. *Ghassan v. INS*, 972 F.2d 631 (5th Cir. 1992.)

In the present matter, the record reflects that the applicant was placed into removal proceedings on September 13, 1997. The applicant was found to be removable by an immigration judge on April 17, 2000. The applicant married her husband a year later, on March 29, 2001. Any hardship pertaining to [REDACTED] separation from the applicant will therefore be accorded diminished weight.

The record contains the following evidence relating to the [REDACTED] extreme hardship claim:

A sworn affidavit signed by [REDACTED] stating that he met the applicant in 1997, that they married in New York in March 2001, and that they have a daughter, born on [REDACTED]. [REDACTED] states that he cannot imagine his life without his wife and child. He states that his daughter is his only child, and that his wife provides him with emotional support and love, and was there for him during personal and business difficulties. [REDACTED] states that he would not want to separate his daughter from her mother, and that because he works, he would be unable to care for his daughter if the applicant were in Russia. He states further that he does not speak Russian, and that he would be unable to find work in Russia if he moved there. He indicates that he and his family would therefore suffer financial ruin if he moved with them to Russia. Mr. [REDACTED] states that he suffers from anxiety, stress and sleepless nights due to his wife's immigration situation, and that his health is being affected by her immigration problems.

An evaluation prepared by psychologist, [REDACTED] on March 24, 2003, reflecting that Mr. [REDACTED] was interviewed by [REDACTED] on March 22, 2003. [REDACTED] found that [REDACTED] suffers from a Major Depressive Disorder. [REDACTED] states that the depression is situational depression, due to the possibility of the applicant's removal from the United States. He notes that [REDACTED] also claimed to provide for his Bipolar, and essentially dysfunctional brother, by providing him with a sense of purpose and employment at his jewelry store. [REDACTED] states that [REDACTED] feels it would be impossible to make a choice between going to Russia with his wife, or staying in the U.S. with his brother. [REDACTED] concludes that, because [REDACTED] symptoms are situational, it is unlikely that antidepressant medication or supportive psychotherapy would help him deal with his depression.

A letter prepared by psychiatrist, [REDACTED] dated January 4, 2008. The letter reflects that [REDACTED] has been under [REDACTED] psychiatric care since May 20, 2005. Dr. [REDACTED] notes [REDACTED] previous diagnosis of depression, and she states that after her psychiatric evaluation on May 20, 2005, she found that [REDACTED] had been under-diagnosed, or that his illness had progressed and that he was in need of regular psychiatric treatment. Dr. [REDACTED] found that [REDACTED] suffers from Bipolar II Disorder and Generalized Anxiety Disorder. She indicates that Mr. [REDACTED] has individual therapy on a weekly basis, and that he takes prescribed medications for mood stabilization and obsessive preoccupations; mood stabilization and depressive symptoms; and severe anxiety with panic attacks and insomnia. Dr. [REDACTED] indicates that [REDACTED] worries are based on his wife's possible removal to Russia, as well as his mother's critically poor health, and his brother's mental illness, disability and inability to work. She notes that [REDACTED] jewelry store recently went out of business and he lost his house, and she states that [REDACTED] has suffered depression and guilt as a result. [REDACTED] mental condition has deteriorated and that he feels that his wife is his only friend. She also notes his fear that he could be separated from his daughter, and that he would be unable to raise his daughter on his own. [REDACTED] states that Mr. [REDACTED] mental state and ability to recover from his numerous losses depends on the stability of his environment, and she indicates that a forced choice between going to Russia with his wife and daughter, or staying in the U.S. near his mother and brother could seriously affect his treatment and future prognosis.

Employment letters and U.S. federal tax information contained in the record reflect that [REDACTED], Inc. was founded in 1977, and that [REDACTED] was the President and Treasurer of the business from October 1986, through July 2007. Since October 2007, [REDACTED] has been as a plant manager for El Dorado Finishing Co., Inc.

The AAO finds, upon review of the totality of the evidence in the present matter, that the applicant has established that her husband would suffer emotional hardship beyond that normally experienced upon removal of a family member, if he remains in the U.S. without the applicant, or if he moves to Russia to be with the applicant.

The psychological and psychiatric evidence contained in the record demonstrate that [REDACTED] suffers from [REDACTED] Anxiety, and Major Depression Disorder. The evidence reflects further that Mr. [REDACTED]

██████████ mental state is directly affected by his wife's possible removal from the United States, and the conflicting responsibilities that ██████████ feels towards his wife and child, and towards his ill mother and brother in the United States. The evidence reflects that ██████████ presently requires biweekly psychiatric therapy for his mental condition, and that he is on several medications to stabilize his depression, anxiety and moods. The evidence additionally reflects that ██████████ mental condition would worsen if he were separated from the applicant, or if he were to move to Russia and stop treatment, and become separated from his ill mother and his dependent brother. The AAO finds that the severity of ██████████ symptoms establishes that he would suffer emotional hardship beyond that normally experienced upon the removal of a family member if the applicant were denied admission into the United States. Accordingly, the applicant has met the extreme hardship element of section 212(i) of the Act.

The AAO finds further that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States, which are not outweighed by adverse factors. *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). In evaluating whether relief is warranted in the exercise of discretion, the factors adverse to the alien may include the nature and underlying circumstances of the removal ground at issue:

[T]he presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must:

[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. *Id.* at 300. (Citations omitted.)

The favorable factors in the present case are a U.S. citizen spouse and child, an approved immigration petition, and the extreme psychological and emotional hardship the applicant's U.S. citizen husband would suffer if the applicant were removed.

The unfavorable factor is that the applicant procured lawful permanent resident status in the United States by misrepresenting herself and obtaining an immigrant visa as a special religious worker.

The AAO finds that although the immigration fraud committed by the applicant is very serious in nature and cannot be condoned, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. The appeal will therefore be sustained.

Section 291 of the Act provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has met her burden in the present matter. Accordingly, the appeal will be sustained and the Form I-601 will be approved.

ORDER: The appeal is sustained. The application is approved.