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U.S. Citizenship
and Immigration
Services

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FILE:



Office: MOSCOW

Date:

FEB 05 2009

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).

John F. Grisson, Acting Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Ukraine 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to enter the United States.

The officer in charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated August 29, 2006.

On appeal, counsel for the applicant contends that the applicant's mother and father will suffer extreme hardship if the applicant is prohibited from entering the United States. *Brief from Counsel*, dated September 25, 2006.

The record contains a brief from counsel in support of the appeal; documentation on health care in Ukraine; copies of medical records for the applicant's father; documentation on the applicant's mother's employment; a letter signed by numerous members of the applicant's parents' community in support of the waiver application; documentation of the applicant's sister's employment; statements from the applicant's mother and father; a copy of the applicant's passport, and; a birth record for the applicant. 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's parents and younger sister entered the United States in August 1998 pursuant to the diversity visa lottery. The applicant was over the age of 23, thus she was not eligible to benefit from her parents' DV-1 status. She applied for visas to enter the United

States, but was denied in 1998 and 1999. The applicant then legally changed her name. On June 27, 2001, the applicant again applied for a visa to enter the United States, using her new name. When asked in a visa interview, she denied that she had previously applied for or been denied visas. Therefore, it was determined that the applicant attempted to obtain a visa by fraud or misrepresentation. The applicant effectively cut off the material line of inquiry of why she was previously denied visas, which had a bearing on the applicant's eligibility for the visa she was seeking. Accordingly, the applicant 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). The applicant does not contest her inadmissibility on appeal.

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 applicant experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's mother and father. 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 Board 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.

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).

On appeal, counsel explains the applicant's family background, including the fact that her parents and sister immigrated to the United States in 1998 yet she remained in Ukraine. *Brief from Counsel*, dated September 25, 2006. Counsel describes hardships the applicant has experienced while living in the Ukraine separate from her parents and sister. *Id.* at 2-5. Counsel notes that the applicant has been unable to secure employment with adequate compensation, thus she depends on economic support from her family in the United States. *Id.* at 4. Counsel states that over the previous six years the applicant's mother has visited her six times, and her father and sister have visited her twice. *Id.*

Counsel explains that the applicant's parents have worked to build up savings in the United States, and they have purchased a home and secured good jobs. *Id.* at 5.

Counsel provides that the applicant is suffering from depression, and her mother and father are worried about her mental state if she cannot join the family in the United States. *Id.* at 11. Counsel indicates that the applicant's family members have stated they would return to the Ukraine if the present waiver application is denied due to their concern for the applicant's mental health. *Id.* Counsel explains that mental health care services in Ukraine are inadequate, thus her family's concerns for her health are well-founded. *Id.* at 12.

Counsel further explains that conditions are poor in Ukraine, including economic depression, crime, and political turmoil. *Id.* at 13. Counsel states that the applicant's parents would have difficulty finding employment in Ukraine due to their age. *Id.* at 14. Counsel notes that the applicant's income is \$45 per month as a school Psychologist. *Id.* Counsel asserts that the applicant's parents would endure significant economic consequences should they return to Ukraine. *Id.*

Counsel states that the applicant's parents have health problems, and they would not have access to adequate care in Ukraine. *Id.* at 15. Counsel provides that the applicant's father suffers from high blood pressure and heart problems, for which he relies on medication that is not available in Ukraine. *Id.* Counsel states that the applicant's father, mother, and sister have no other immediate relatives in Ukraine other than the applicant. *Id.* Counsel references a letter from the applicant's parents' friends, coworkers, and relatives as evidence of the applicant's family's integration into the United States. *Id.* at 16.

Counsel contends that the applicant's parents would experience extreme hardship should they remain in the United States without the applicant. *Id.* at 17. **Counsel states that they would endure economic detriment due to the need to continue to support the applicant in Ukraine.** *Id.* Counsel asserts that the applicant's parents would be unable to see the applicant due to the expense of travel to the Ukraine. *Id.* Counsel states that the applicant's parents would suffer emotional consequences due to separation from the applicant. *Id.*

The applicant's mother stated that her family is broken and that she wishes to have the applicant in the United States. *Statement from Applicant's Mother*, undated. She asked for forgiveness for the applicant's mistake. *Id.* at 1. The applicant's mother discussed many of the issues raised in counsel's brief, including the economic and health consequences of her and the applicant's father returning to Ukraine. *Second Statement from Applicant's Mother*, dated October 11, 2005. The applicant's mother expressed her concern for her younger daughter in the United States should they return to Ukraine, as she would have fewer opportunities there. *Id.* at 5.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if she is prohibited from entering the United States. The applicant has not established that her mother and father will suffer extreme hardship if they remain in the United States without her. The applicant's mother expressed that her family is enduring separation, and they wish for the applicant to join them. However, the applicant has not established that her mother or father are experiencing emotional consequences that are different or more severe than those ordinarily expected when families are separated due to inadmissibility. 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.

The applicant's mother and father immigrated to the United States in 1998 without the applicant, and they have lived in separate countries for approximately 10 years. Thus, they do not rely on her for daily support.

The record reflects that the applicant's parents have visited her in the Ukraine, and the applicant has not shown that they lack adequate financial resources to continue making such visits. The AAO acknowledges that the applicant's parents are concerned for her mental health due to being in Ukraine without them. However, as noted above, direct hardship to the applicant is not a basis for a waiver under section 212(i) of the Act. Section 212(i) of the Act. The AAO gives due consideration of the impact the applicant's hardship has on her mother and father, yet the applicant has not shown that her emotional challenges elevate her parents' hardship to extreme hardship.

The applicant's mother contends that she and the applicant's father provide economic support for the applicant in Ukraine, and that this constitutes a financial burden. Yet, the applicant has not submitted any financial documentation for her parents or herself to show her economic needs or any contribution made by her parents. The record shows that the applicant is employed at a rate of approximately \$45 per month. While this wage is extremely low by U.S. standards, the applicant has not provided an account of her income needs in Ukraine in order that the AAO can determine her ability to meet her needs or any economic burden she presents on her parents.

The applicant submitted evidence that her father has significant health conditions which require medical care. While counsel contends that the applicant's parents would have difficulty obtaining adequate health care in Ukraine, the applicant has not shown that her presence in the Ukraine has an impact on her parents' health or access to any needed treatment should they remain in the United States.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her mother or father would experience extreme hardship should the applicant be prohibited from entering the United States and they remain.

The applicant has submitted evidence to show that her parents would suffer significant consequences should they return to Ukraine. The record supports that the applicant's father has significant cardiac disease and related impairment. The applicant has provided documentation to support that her father would be unlikely to obtain the level of care in Ukraine that he receives in the United States. The AAO acknowledges that the applicant's parents would incur significant expenses should they relocate to Ukraine. It is reasonable that the applicant's parents would suffer emotional consequences should they abandon their lives and goals in the United States to return to Ukraine after recently becoming U.S. citizens.

However, in order to establish eligibility for consideration for a waiver under section 212(i) of the Act, the applicant must show that denial of the present waiver application would result in extreme hardship to her mother or father. Section 212(i) of the Act. As the applicant has not shown that her parents would suffer extreme hardship should they remain in the United States, she has not shown that denial of the application would result in extreme hardship to a qualifying relative. *Id.* 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(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.