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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[REDACTED]

FILE:

Office: ATLANTA, GEORGIA

Date: FEB 09 2009

IN RE:

Applicant:

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

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The applicant, [REDACTED], is a native and citizen of Russia 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 admission into the United States by fraud or willful misrepresentation.

The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so as to remain in the United States with her U.S. citizen spouse. The district director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated July 21, 2005. The applicant filed a timely appeal.

The AAO will first address the finding of inadmissibility, which is under section 212(a)(6)(C) of the Act, and which provides, in pertinent part:

- (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 chapter is inadmissible.

On appeal, counsel states that [REDACTED] never admitted to gaining admission into the United States through fraud. He states that [REDACTED] maintains that she obtained her visa properly and was not aware of, nor did she participate in, any fraud. Counsel states that [REDACTED] testified under oath to obtaining her visa on May 21, 1999 through a travel agency, and that she met the agency's representative in front of the U.S. Consulate and that the representative waited in line with her passport and money for the visa so that she did not have to. He states that the agency charged the applicant \$150 for their services, and that the applicant was told that an officer from the U.S. Consulate might call her to arrange an interview, but that sometimes visas were issued without interviews. Counsel states that a couple of days later the agency called the applicant to pick up her visa. Counsel claims that the applicant was entitled to a visitor's visa and that any fraud should be viewed as *de minimis*.

The record contains the applicant's sworn statement wherein she states that she obtained a visa on May 21, 1999 by paying \$450 to a travel agency that she found in the newspaper, in addition to the travel agency's fee of \$150. She states that she did not have time to complete the visa application and stand in line at the Embassy. She states that she met someone from the travel agency named [REDACTED] or [REDACTED] in front of the U.S. consulate and the applicant states that she gave the person her passport, money for the visa, and \$150, and that [REDACTED] or [REDACTED] waited in line and was to call her if the consular officer needed to arrange an interview with her. The applicant states that not every person needs to go to an interview for a visa. She stated that in a couple of days somebody called

her from the travel agency to pick up her visa, which she assumed was authentic. She states that she used the visa to enter the United States.

The AAO finds that the applicant's sworn statement reflects that she procured admission into the United States on June 11, 1999, using a fraudulent U.S. visitor's visa, with the issuance date of May 21, 1999, which she obtained from a travel agency in Russia. The applicant has not sufficiently explained why she believed that the visitor's visa that she obtained through a travel agency was issued by the U.S. consulate and was not fraudulent. The burden of proving eligibility remains entirely with the applicant. In light of her use of a fraudulent B1/B2 nonimmigrant visa to gain admission into the United States, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

A waiver is available for inadmissibility under section 212(a)(6)(C) of the Act, which the AAO will now address. Section 212(i) of the Act provides:

- (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 waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant and to his or her child are not a consideration under section 212(i) of the Act, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act, and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is [REDACTED], the applicant's U.S. citizen spouse. Once extreme hardship is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

On appeal, counsel states that the applicant's 60-year-old husband would experience extreme hardship if he were to join her in Russia because he would be separated from his siblings, his son and daughter, and his 81-year-old mother, for whom he is the primary caregiver. Counsel states that the applicant's husband would be unable to pay his mortgage, help his mother financially, pay for his son's and daughter's college, and save for retirement; and he would not be able to obtain employment in Russia as he does not speak Russian; and his health problems would not be adequately treated there. Counsel describes [REDACTED] as having Type II diabetes, polycythemia, a polyp on his colon which was removed but others will reoccur, hyperlipidemia, labile hypertension, skin cancer, hip pain, recurrent low back pain symptoms with lumbar spondylosis and degenerative changes, hepatitis A, and claustrophobia.

Extreme hardship to the applicant's qualifying relative must be established in the event that he joins the applicant to live in Russia, and alternatively, if remains in the United States without the applicant. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

The record contains, in addition to other documents, a narrative by [REDACTED] an affidavit by the applicant's mother-in-law, financial records, medical records, letters from physicians, and documents from various sources about health care in Russia.

In his narrative, [REDACTED] conveys that he has health problems and is concerned about receiving proper medical care in Russia, he describes his close relationship with his mother and children, and his need to have a sufficient income.

In her affidavit, the applicant's mother-in-law states that her son, [REDACTED], assists her financially and with driving, and she conveys that she has chronic diverticulitis, arthritis, and depression.

The letters by [REDACTED] physicians confirm the health problems described by counsel on appeal. In addition, the letter dated May 5, 2006, by [REDACTED] states that Mr. [REDACTED] has been [REDACTED] patient since late April of 2006, and that on May 1, 2006, Mr. [REDACTED] was found to have critical three vessel atherosclerotic heart disease and underwent four vessel bypass grafting, and currently remains hospitalized. [REDACTED] anticipates at least one month recovery period followed by several months of cardiac rehabilitation. The letter by [REDACTED] M.D., Ph.D., who is treating [REDACTED] for severe lumbar spondylosis-

related pain, indicates that it would be an extreme hardship for [REDACTED] to be dependent upon the Russian healthcare system. The letter by [REDACTED] who reviewed the medical records of [REDACTED], indicates that [REDACTED] made multiple trips to Russia, visiting clinicians, clinics, training centers, and public health facilities and that relative to Western standards, the Russian health system provides a lower level of care in general and for people with significant medical problems such as [REDACTED]. He indicates that if [REDACTED] had a heart attack while in Russia, there is a substantial higher likelihood that it would be fatal because of the lack of availability of thrombolysis, angioplasty, and coronary bypass surgery.

In rendering this decision, the AAO has carefully considered all of the evidence in the record.

The AAO finds that the record demonstrates that [REDACTED] has serious health problems for which he receives regular care and the letter by [REDACTED] indicates that [REDACTED] would receive a lower standard of medical care, particularly for a heart attack, if he were in Russia. In light of the [REDACTED]'s medical history, the AAO finds that [REDACTED] would experience extreme hardship if he were to join his spouse to live in Russia.

An applicant is required to establish extreme hardship to the qualifying relative if he or she were to remain in the United States without the applicant. Here, the applicant makes no claim of extreme hardship to her husband if he were to remain in the United States without her.

The applicant established extreme hardship to her spouse if he were to join her to live in Russia; however, the applicant failed to establish extreme hardship if he were to remain in the United States without her. Consequently, extreme hardship to a qualifying family member for purposes of relief under 212(i) the Act, 8 U.S.C. § 1182(i), has not been established.

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. The applicant has not met that burden. Accordingly, the appeal will be dismissed. The application will be denied.

ORDER: The appeal is dismissed. The application is denied.