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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: MOSCOW, RUSSIA Date: JAN 07 2009

IN RE: [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 PETITIONER:

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

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, 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 Ukraine who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure a visa by fraud or willful misrepresentation of a material fact. The applicant is the fiancé of a U.S. Citizen and the beneficiary of an approved Petition for Alien Fiancé(e). He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to travel to the United States and marry his fiancée.

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 accordingly. *See Decision of the Officer-in-Charge* dated June 22, 2006.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in finding the applicant to be inadmissible for alleged misrepresentations of material facts when this finding was unsupported by the evidence on the record. *See Notice of Appeal to the AAO* (Form I-290B). Counsel states that the misrepresentations the applicant was found to have made were neither willful nor material and that in all three visa applications on which the applicant was accused of fraud or willful misrepresentation, the applicant's statements "do not fall under [the] definition of fraud, as interpreted by 9 FAM 60.43." *Brief in Support of Appeal at 3.* Counsel states,

> The record does not indicate that any of [redacted] consular officers, in consideration of all three referenced visa applications, ever believed to or acted upon any of representations allegedly made by either Applicant or his agents. *Brief at 3.*

Counsel further asserts that the applicant did not have any knowledge of alleged misrepresentations made by unscrupulous travel agents or other individuals on his behalf in connection with his two 1997 applications for nonimmigrant visas. Counsel further asserts that the applicant's denial during his 2005 fiancé visa interview that he had previously been denied a visa did not constitute a material misrepresentation. *Brief in Support of Appeal at 5.* Counsel additionally asserts that the applicant's fiancée would suffer extreme hardship if the applicant is denied admission to the United States because of her medical condition and inability to relocate to Ukraine. *Brief at 6.* In support of the appeal, counsel submitted a copy of a letter sent to [redacted] by the applicant's fiancée concerning his case, a copy of a 2003 letter denying the applicant a visitor's visa, a letter from the applicant's fiancée's doctor, and copies of death certificates for relatives of the applicant's fiancée. 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:

> (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:

> **(1)** The [Secretary] may, in the discretion of the [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 [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.

Counsel asserts that the record does not contain evidence to support a finding that the applicant made willful and material misrepresentations when applying for nonimmigrant visas in 1997. Counsel states,

> There is no evidence that in 1997 Applicant appeared for an interview in person or made any misrepresentations himself. Even assuming that misrepresentations were made by an unscrupulous "travel" agent, there is nothing on the record that . . . established that the alien was aware of the action being taken in furtherance of the [visa] application. *Brief at 4.*

In response to the finding that the applicant had committed fraud in connection with a subsequent 1997 application for a C1/D (crewman) visa, counsel states,

> The Applicant insisted that signature in sailor's passport was forged. Notably, the sailor's passport was in possession of the consular department since 1997. At the interview, Applicant suggested that passport was fraudulently procured by an individual who at the time had "connections" with somebody inside the US Embassy in Kiev. *Brief at 4-5.*

Counsel additionally asserts that the applicant's statements during his 2005 interview for a fiancé visa did not constitute material misrepresentations and relies on 9 FAM 40.63 N.6.3-3 to support the assertion that "concealment of denial of previous visa applications, made in the course of a non-immigrant visa application, is not material, especially when the consular officer knew about them or had other objective information available." *Brief at 5.* Counsel states that the decision "does not cite any evidence or information that was concealed by Applicant and was not available to the consular officer at the time of the interview." *Id.*

The AAO notes that when applying for a visa, the burden of proving admissibility and eligibility for the visa remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant was found to be inadmissible in 1997 after presenting a "sailor's passport" in an attempt to obtain a C1/D visa even though he had never been a sailor. Counsel states that the applicant denied having obtained the passport himself and suggested that it was obtained without his knowledge by an unknown individual. No further explanation was given by the applicant as to how a passport was obtained in his name and submitted in connection with his visa application without his knowledge, and the AAO finds that the applicant has failed to meet his burden of establishing that he is not

inadmissible under section 212(a)(6)(C)(i) of the Act for submitting a fraudulent sailor's passport in connection with his C1/D visa application.

Further, the applicant concealed having been denied a visa based on a finding of fraud or misrepresentation when applying for a fiancé visa in 2005. In *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

> 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 which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

Although the concealment of a prior visa denial is not in itself a material misrepresentation, in the present case the prior denial was based on fraud, which would render the applicant inadmissible. The concealment therefore sought to "cut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded." *See Matter of S- and B-C-, supra.*

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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 BIA 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, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court 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 *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere

showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

In the present case, the record reflects that the applicant is a fifty-four year-old native and citizen of Ukraine who has never entered the United States and currently resides in Ivano-Frankivsk, Ukraine. He met his fiancée, a fifty year-old native of Ukraine and U.S. Citizen who resides in Sterling Heights, Michigan, in 1987, when she was visiting the town where he resided in Ukraine.

Counsel asserts that the applicant's fiancée would suffer extreme emotional and financial hardship if the applicant is not admitted to the United States because she cannot relocate to Ukraine due to her medical condition and because she lost her three closest relatives in the past few years and has no family in the United States. *Brief* at 6. The applicant's fiancée states that she cannot relocate to Ukraine because she has much stronger ties to the United States and has a good job in the United States and would not be able to find comparable employment in Ukraine. No documentation was submitted concerning the applicant's employment and ties in the United States or conditions in Ukraine to support these assertions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici,* 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California,* 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant's fiancée states that she is being treated in the United States for hypothyroidism and she fears her condition will worsen if she relocates to Ukraine because her doctors "suspected that [her] disease was originally caused by the quality or air and waiter in Ukraine, and it will be unrealistic to get proper medications and adequate medical care there." ***Letter from*** dated July 19, 2005. A letter from her doctor states that she is being treated with thyroid replacement medication and that it is important that she "continuously monitor her thyroid function and take the medication." *Letter from* dated July 13, 2006. Dr. further states that the applicant's fiancée reported a lot of stress and appeared depressed during an office visit in July 2006, and recommends that a friend or family member from Ukraine help provide support to the applicant, who has no family in the United States. *Id.*

Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record does not establish, however, that the applicant's fiancée's condition is so serious that she would suffer extreme hardship if she were to relocate to Ukraine. The record contains a brief letter from her doctor stating that she needs to continuously monitor her thyroid function and take medication, but no further detail concerning the nature or seriousness of the condition, any current treatment or medications, or the type of care needed in the future. Without more detailed information, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed. Further, counsel did not submit any information on the availability of medial care in Ukraine to support the assertion that the applicant's fiancée would not have access to adequate care there.

The evidence on the record also fails to establish that any emotional difficulties the applicant's fiancée is experiencing are more serious than the type of hardship a family member would normally

suffer when faced with the prospect of a relative's deportation or exclusion. Although the depth of her distress over being separated from her fiancé is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

There is no evidence on the record to establish that the applicant's fiancée would experience any hardship beyond the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

In this case, the record does not contain sufficient evidence to show that any hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his fiancée as required under sections 212(i) of the Act.

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. 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.