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U.S. Citizenship
and Immigration
Services

7/2



FILE:



Office: MOSCOW

Date:

JAN 14 2009

IN RE:



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:

SELF-REPRESENTED

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.

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 Officer-in-Charge, Moscow, Russia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Armenia 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 having sought to procure a visa through fraud or misrepresentation. The applicant is married to a Lawful Permanent Resident and is the beneficiary of an approved Petition for Alien Relative filed by her U.S. 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 spouse.

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 July 19, 2006.

On appeal, the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) erred in determining that her husband would not suffer extreme hardship if she is not admitted to the United States. Specifically, she submitted a statement from her husband indicating that he has an emotional and psychological disorder and needs the applicant to take care of him. *See Statement of* [REDACTED] dated August 11, 2006. In his statement the applicant's husband further states that he cannot return to Armenia because it reminds him of his relatives who have died and his psychological conditions worsen when he is there. *Id.* In support of the waiver application and appeal, the applicant submitted declarations from herself, her husband, and her daughter; medical records for herself and her husband; and a psychiatric evaluation of her husband. 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.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or

lawfully resident spouse or parent of the applicant. 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. *Id.* at 566. The BIA has further stated:

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).

In addition, the Ninth Circuit Court of Appeals has held, "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

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 *Hassan v. INS*, *supra*, the court further held 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. Moreover, the U.S. Supreme Court additionally 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 Armenia who currently resides in Yerevan, Armenia. In 2003 she applied for a visitor's visa at the

U.S. Consulate in Moscow, and stated that she had no family in the United States and her husband was dead, when in fact her U.S. Citizen daughter and Lawful Permanent Resident husband were residing in California at the time. She was found to be inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to procure a visa through fraud or misrepresentation of a material fact. Her husband is a fifty-eight year-old native and citizen of Armenia and Lawful Permanent Resident whom she married in Yerevan, Armenia on October 12, 1976. the applicant's husband currently resides in Los Angeles, California with their adult U.S. Citizen daughter and her family.

The applicant asserts that her husband is suffering emotional hardship as a result of their ongoing separation, and the effects of this separation are exacerbated by his psychological condition. The applicant's husband states that he is in poor health and further states, "the situation that I live in now contributes to the decline of my psychological, social, and emotional state." *Declaration of* [REDACTED] dated August 10, 2006. He states that the stress of the situation also caused the applicant to develop a thyroid condition that required surgery in October 2005, and that when he returned to Armenia to be with her for the surgery, he learned that his brother had committed suicide the previous year. *Declaration of* [REDACTED]. He states that his family did not inform him of the suicide earlier because they believed he could not endure this news, and that learning of the death, which occurred ten years after his other brother's death, affected his mental state and caused him to seek psychological and psychiatric treatment. *Id.*

Documentation in the file indicates that the applicant underwent thyroid surgery on October 18, 2005, and that from November 23 to December 3, 2005, the applicant's husband was treated at a mental health facility in Armenia for "an episode of minor depression" after experiencing the shock of learning of his brother's suicide. *See "Stress" Mental Health Center, Discharge Summary for* [REDACTED] dated December 3, 2005. The discharge summary states that the applicant's husband was hospitalized for ten days after being referred by his family for treatment due to symptoms of depression that worsened over a period of three weeks. *Id.* A letter from the applicant's husband's doctor in Glendale, California states:

He has been diagnosed with the following diagnoses: Bell's palsy, history of TIA, bipolar disorder, imbalance, impaired coordination. Prognosis is guarded for full recovery. It is advised for him not to travel abroad. *Letter from* [REDACTED] dated August 10, 2006.

A psychiatric evaluation for the applicant's husband conducted on August 4, 2006 states that the applicant has been suffering from increasing depression over the past year and has felt "a great sense of loss" over the death of both of his brothers and the separation from his wife. *See Psychiatric Evaluation by* [REDACTED] dated August 4, 2006. The evaluation states that the applicant reports he cannot return to Russia, where he and the applicant lived for a time, because being there reminds him of his brother. *See Psychiatric Evaluation by* [REDACTED]. The evaluation states that the applicant's husband's mood was depressed and anxious and that he reported "some suicidality but no current plan," and contains a diagnosis of "bipolar affective disorder, mixed versus major depression." *Id.* [REDACTED] prescribed the medication Zyprexa/Zydis to treat his condition.

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 letters and records prepared by the physicians and mental health professionals who have evaluated and treated the applicant's husband indicate that he is experiencing and has experienced in the past episodes of depression, has been diagnosed with bipolar disorder, and is currently receiving treatment for these conditions. The evidence on the record establishes that the applicant's husband's psychological condition is serious and he is suffering emotional distress that appears to be exacerbated by separation from the applicant, to whom he had been married for over thirty years. In light of his past history of depression and current psychological condition, it appears that this emotional hardship is unusual or beyond that which would normally be expected upon deportation or exclusion. The applicant further asserts that the applicant's husband would suffer severe emotional hardship if he relocates to Armenia or Russia and is reminded of his deceased brothers. The applicant's husband has been residing with his daughter, her husband, and their two children in Los Angeles, California since 2003, and he states that he likes the stable lifestyle and "lawfulness" in the United States, and feels comfortable living with his daughter and grandchildren. *See Declaration of [REDACTED] dated August 10, 2006.* Further, his physician advises against him traveling outside the United States due to his medical and psychological condition.

When considered in the aggregate, the factors of hardship to the applicant's husband should he remain in the United States or relocate to Armenia constitutes extreme hardship. This finding is largely based on evidence submitted with the appeal that documents his history of depression and bipolar disorder. It appears that separation from the applicant is exacerbating his condition, and, as noted above, separation from close family members is a primary concern in assessing extreme hardship. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998). It further appears that relocation to Armenia, where he would be separated from a stable home with his daughter and grandchildren and would be reminded of his brother who committed suicide there, as well as the financial hardship that would result from loss of employment and decline in standard of living in Armenia, would cause the applicant's husband great emotional distress that would jeopardize his mental health.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. 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. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(i) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the 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). *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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 adverse factor in the present case is the applicant's immigration violation, seeking to procure a visa through misrepresentation of a material fact, in August 2003.

The favorable factors in the present case are the hardship to the applicant's husband; the applicant's lack of a criminal record or additional immigration violations; and her family ties in the United States, including her daughter, grandchildren, and husband of over thirty years.

The AAO finds that applicant's violation of the immigration laws cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh this adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.