U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

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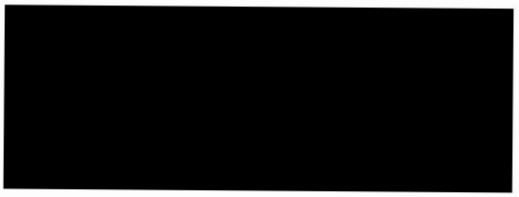

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FILE: [redacted] Office: LONDON, ENGLAND Date: JUN 0 2 2009

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) and under section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The applicant is a native of the former Soviet Union and a citizen of Estonia who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more and seeking admission within ten years of his last departure, and 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 procuring admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse.

The officer-in-charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. *Decision of the Officer-in-Charge*, at 3, dated November 17, 2006.

On appeal, the applicant's spouse states that she is not in agreement with the assertions made in the denial notice. *Form I-290B*, dated December 12, 2006.

The record includes, but is not limited to, the applicant's spouse's statements, physician letters for the applicant's spouse, letters of support and evidence that the applicant's spouse's daughter is in the navy.

The officer-in-charge noted that the applicant had been found to be inadmissible under section 212(a)(6)(C)(i) of the Act by the U.S. Embassy in Helsinki for admitting his true intention was to seek asylum when he entered the United States as a visitor. *Decision of the Officer-in-Charge*, at 2. The AAO, however, does not find the record to provide a clear indication of when the applicant formed the intent to file for asylum (whether it was before he presented himself for admission to the United States as a visitor or after this). The record does not include a sworn statement from the applicant addressing his reasons for seeking admission to the United States. Absent more conclusive evidence, the AAO does not find the record to establish that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.[1]

The record reflects that the applicant entered the United States on a B-2 visitor's visa on November 19, 1999, his authorized period of stay expired on May 18, 2000, he properly filed an asylum application on December 10, 2001, and he departed the United States on April 15, 2004 pursuant to a

[1] The AAO notes, however, that a waiver of the applicant's inadmissibility under 212(a)(9)(B)(v) of the Act, which is the focus of this proceeding, would also waive inadmissibility under 212(a)(6)(C)(i). The waiver standard, extreme hardship, is the same for both grounds and the applicant's spouse is also a qualifying relative for the purposes of section 212(i) of the Act.

voluntary departure order.[2] Therefore, the applicant accrued unlawful presence from May 18, 2000, the date his authorized period of stay expired, until December 10, 2001, the date he properly filed his asylum application.[3] The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his April 15, 2004 departure.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
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> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
>
> (II) has been unlawfully present in the United States **for one year or more,** and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
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> . . . .
>
> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme

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[2] Counsel asserts that the immigration judge found the applicant to have filed his asylum application prior to November 19, 2000 and within one year of entering the United States. *Letter from Prior Counsel*, at 2, dated January 28, 2005. The record indicates that the immigration judge granted the applicant an exception to the one-year filing rule based on his reasonable efforts to file within one year of his entry to the United States. *Immigration Court Transcript*, at 18-19, dated November 18, 2002. However, the record does not reflect that the applicant had or was considered by the immigration judge to have a pending asylum application prior to December 10, 2001.

[3] The AAO notes that the record is not clear as to whether the applicant worked unlawfully while his asylum application was pending. If he worked unlawfully while his asylum application was pending, then he would have accrued unlawful presence throughout the entire period in which the asylum application was pending. However, this additional time would not alter any findings of inadmissibility.

hardship. These factors include the presence of lawful permanent resident or United States citizen family ties to 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 first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Estonia. The applicant's spouse states that in Estonia, she would have no health insurance, material support or employment; the applicant could not find a job when he returned to Estonia as he had forgotten how to speak Estonian; she could not leave her house without the applicant; people in Estonia dislike those who do not speak their language; the applicant also has to support his 84 year-old mother; her health worsens and she gets more depressed and suicidal when visiting Estonia; and when she sees poor and angry people, it makes her more depressed. *Applicant's Spouse's Third Statement*, at 1, dated January 9, 2007. The record reflects that the applicant's spouse is under the care of a psychiatrist for Major Depressive Disorder, her condition has recently become notably more unstable and psychiatric hospitalization is a possibility. *Letters from* ., dated May 12, 2005 and October 10, 2005. Based on the seriousness of her medical condition, the loss of her established treatment relationship and the combined effect of the normal stresses of relocation, the AAO finds that the applicant's spouse would suffer extreme hardship as a result of relocating to Estonia.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse states that she works in the assisted living field, she is the mother of two, and the expense of airline tickets and immigration lawyers is having an irreparable effect on her family. *Applicant's Spouse's Statement*, at 1, dated October 12, 2004. The applicant's spouse states that she cannot sleep normally at night and she feels bad because of it. *Applicant's Spouse's Statement*, at 1. The applicant's spouse states that her health has become more problematic since the applicant left the United States, she has been very depressed, she has suicidal thoughts, her hands tremble, she helps the applicant financially (a total of more than $6,000), and that she and the applicant love each other. *Applicant's Spouse's Third Statement*, at 1-2. The applicant's spouse states that her children miss the applicant very much and they love him. *Applicant's Spouse's Second Statement*, dated February 16, 2005. As mentioned, the record reflects that the applicant's spouse is under the care of a psychiatrist for Major Depressive Disorder, and that her condition has recently become more unstable, with suicidal tendencies. *Letter from* Based primarily on the seriousness of the applicant's spouse's medical condition, the AAO finds that she would suffer extreme hardship if she were to remain in the United States without the applicant.

The AAO additionally finds 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. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether section 212(h)(1)(B) 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-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[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 only adverse factor established by the record in the present case is the applicant's unlawful presence.

The favorable factors for the applicant include his U.S. citizen spouse, extreme hardship to his spouse and letters attesting to his good moral character.

The AAO finds that the immigration violation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.