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



U.S. Citizenship  
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FILE:

Office: MOSCOW, RUSSIA

Date: SEP 01 2009

IN RE: Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility 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.

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. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Officer In Charge (OIC), 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 Russia 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 more than one year and seeking readmission within 10 years of her last departure from the United States. The record reflects that the applicant is the spouse of a United States citizen and that she is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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), in order to reside in the United States with her United States citizen spouse.

The Acting OIC found that the applicant failed to establish that extreme hardship would be imposed on her spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting Officer In Charge*, dated April 10, 2007.

On appeal, the applicant states her husband is suffering hardship by being separated from her. *Letter from the applicant attached to Form I-290B*, dated May 8, 2007.

The record includes, but is not limited to, letters from the applicant and her husband, a letter from [REDACTED] regarding the applicant's husband's psychological condition, and statements from the Social Security Administration regarding the applicant's husband disability. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

Aliens Unlawfully Present.-

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
  - .....
  - (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.
  - .....
- (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 [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.

The record indicates that on August 30, 1995, [REDACTED] filed a Petition for Alien Fiancé(e) (Form I-129F) on behalf of the applicant. On October 27, 1995, the applicant's Form I-129F was approved. On April 19, 1996, the applicant entered the United States on a K-1 nonimmigrant visa. The applicant failed to marry [REDACTED] and instead on April 19, 2000, she married [REDACTED], a naturalized United States citizen. On April 6, 2001, the applicant's husband filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On May 17, 2004, the District Director, Los Angeles, California, denied the applicant's Form I-485. On June 14, 2004, the applicant filed a motion to reopen the denial of her Form I-485. On June 15, 2004, the applicant's husband filed another Form I-130 on behalf of the applicant. On the same day, the applicant filed another Form I-485. On February 17, 2005, the District Director, Los Angeles, California, denied the applicant's motion to reopen, and denied the applicant's second Form I-485. On the same day, the applicant's second Form I-130 was approved. On September 14, 2005, the applicant's first Form I-130 was approved. On January 30, 2006, the applicant departed the United States. On August 28, 2006, the applicant filed a Form I-601. On April 10, 2007, the Acting OIC denied the applicant's Form I-601, finding that the applicant accrued more than 365 days of unlawful presence and failed to establish the existence of extreme hardship to her spouse.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under IIRIRA, until January 30, 2006, the date the applicant departed the United States. The applicant is attempting to seek admission into the United States within 10 years of her January 30, 2006 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) 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 herself experiences upon removal is irrelevant to a section 212(a)(9)(B)(v) waiver proceeding. 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, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

The applicant's husband claims he is suffering extreme hardship by being separated from the applicant. In a letter dated October 16, 2007, the applicant's husband states he feels as if he has lost his best friend, and he has no interest in life anymore. As indicated in a letter dated October 4, 2007, [REDACTED] diagnosed the applicant's husband with Post-Traumatic Stress Disorder with psychotic features. [REDACTED] claims that the applicant was taking care of the applicant's husband, by "providing emotional support and [the applicant's husband] was stable for years." However, after the applicant was denied entry into the United States, the applicant's husband "was progressively decompensating.... [The applicant] was the only source of support for him.... He became increasingly depressed and paranoid." [REDACTED] further states that "[t]o prevent [the applicant's husband's] further decompensation [he] should be reunited with [the applicant] as soon as possible." The AAO notes that since the applicant's husband's post-traumatic stress disorder seems to be getting worse primarily because of the separation from the applicant, if the applicant's husband joins the applicant in Russia then the applicant's husband's psychological condition would presumably stabilize. In a letter dated May 8, 2007, the applicant states that when her husband visited her in Russia, he was robbed and had "a hard time.... It was a miserable life for [them] in Russia, so [the applicant's husband] came back." The AAO notes that the applicant failed to provide a statement or an affidavit from her husband regarding the extreme hardship he would suffer if he relocated to Russia to be with her.

Nevertheless, the AAO finds that the applicant has demonstrated extreme hardship to her husband if he remains in the United States without the applicant; however, it has not been established that the applicant's husband would suffer extreme hardship if he joined the applicant in Russia. The AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to her husband's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). The AAO, therefore, finds the applicant has failed to establish extreme hardship to her husband if he joins her in Russia.

In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's husband will endure, and has endured, hardship as a result of separation from the applicant; however, he has not demonstrated extreme hardship if he were to join the applicant in Russia.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. 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(a)(9)(B) 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.