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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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Services

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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:



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 Field Office Director, Moscow, Russia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Russia 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 indicates that the applicant is married to a naturalized United States citizen and 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 husband and United States citizen son.

The Acting Field Office Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting Field Office Director*, dated May 29, 2007.

On appeal, the applicant, through counsel, asserts the applicant's husband will suffer extreme hardship. *Form I-290B*, filed June 26, 2007. Additionally, counsel claims that the "supposed misrepresentation of earlier work history and residency" was "in actuality a product of mere human error." *Id.* Counsel states that the applicant's husband filled out the applicant's information and there was a miscommunication. *See appeal brief*, page 3, dated July 25, 2007. The AAO notes that the applicant was not found to be inadmissible based on any misrepresentation of her work history and residency; therefore, the AAO will only address inadmissibility based on the applicant's unlawful presence in the United States.

The record includes, but is not limited to, counsel's brief, letters from the applicant and her husband, medical documents pertaining to the applicant's husband's and son's medical conditions, psychological evaluations on the applicant's husband and son, and the applicant's marriage certificate. 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:

(B) 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 AAO notes that the record contains references to the hardship that the applicant's son would suffer if the applicant were denied admission into the United States. Section 212(a)(9)(B)(i) of the Act provides that a waiver, under section 212(a)(9)(B)(v) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. In the present case, the applicant's husband is the only qualifying relative, and hardship to the applicant's son will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant initially entered the United States on a K-1 nonimmigrant visa on July 1, 2001, with authorization to remain in the United States until September 28, 2001. The applicant's intentions were to marry [REDACTED]; however, when she arrived in the United States, [REDACTED] called off the engagement. On August 20, 2002, the applicant married [REDACTED] a lawful permanent resident of the United States. On March 3, 2006, the applicant's husband became a United States citizen. On March 31, 2006, the applicant's United States citizen husband filed a Form I-130 on behalf of the applicant. On July 10, 2006, the applicant's Form I-130 was approved. On January 4, 2007, the applicant departed the United States. On January 31, 2007, the applicant filed a Form I-601. On May 29, 2007, the Acting Field Office Director denied the applicant's Form I-601, finding that the applicant accrued more than a year of unlawful presence and she failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant accrued unlawful presence from September 28, 2001, the date the applicant's authorization to remain in the United States expired, until January 4, 2007, 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 4, 2007 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.

In a letter dated January 2007, the applicant's husband claims that since the applicant has been in Russia, he and his son are suffering "extreme and unusual hardship." The applicant's husband further states that if his son resides in Russia, "he will not get the same level of education" as he would get in the United States. Counsel claims that the applicant's son currently resides in Russia with the applicant, and he has been suffering from various medical and psychological conditions. *See appeal brief, supra* at 4. The AAO notes that documentation in the record establishes that on June 11, 2007, the applicant's son was diagnosed with acute respiratory viral infection, acute rhinopharyngitis, and acute obstructive bronchitis; however, he was prescribed treatment. The AAO notes that the applicant's son received treatment for his medical conditions in Russia; therefore, the applicant failed to establish that her son cannot receive treatment for his medical conditions in Russia or that he has to be in the United States to receive medical treatments. In an evaluation dated June 13, 2007, [REDACTED] states the applicant's son needs "comfortable conditions for [his] nervous and psychological development...because in the given case the child suffers a severe stress and deprivation because of being separated from his Father and home." The AAO notes that the applicant's son may experience some hardship in relocating to Russia; however, the applicant's son is not a qualifying relative for a waiver under section 212(a)(9)(B)(v) of the Act.

The applicant's husband states in his 2007 letter that he suffers from blood pressure, heartburn, high cholesterol, severe headaches and stress, and he has trouble sleeping. *See also Letter from* [REDACTED], dated June 21, 2007 ("[The applicant's husband] has high blood pressure, headache and back pain."). The AAO notes that other than a couple of prescription orders and two letters from Dr. [REDACTED] indicating symptoms, there is nothing from a doctor indicating exactly what the medical causes or conditions are, any prognosis or what assistance is needed and/or given by the applicant. Additionally, there was no documentation submitted establishing that the applicant's husband could not receive treatment for his medical conditions in Russia or that he has to remain in the United States to receive his medical treatments. In an evaluation dated June 12, 2007, [REDACTED] diagnosed the applicant's husband with major depressive episode and anxiety disorder. [REDACTED] states that since the applicant's husband's "symptoms are related to the separation from [the applicant] and son, they will also likely improve if the family can be reunified." The AAO notes that since the applicant's husband's anxiety and depression are primarily caused by the separation from the applicant, if the applicant's husband joins the applicant in Russia then the anxiety and depression would presumably no longer be an issue.

In his 2007 letter, the applicant's husband states that if he joins the applicant in Russia, he "would have to close [his] store and loose [sic] [his] job." Additionally, the applicant's husband claims that he does not speak Russian and he "could never...start a business in Russia." The AAO notes that the applicant's husband may experience some hardship in relocating to Russia, a country in which he has no previous ties; however, it has not been established that there are no employment options for him in Russia solely because of his lack of fluency in the Russian language. Additionally, the AAO notes that the applicant's husband is a business owner and it has not been established that he has no transferable skills that would aid him in obtaining a job in Russia. The applicant's husband states his parents are elderly and sick, and they rely on him to take care of them. Additionally, the applicant's husband states the applicant helps in caring for his elderly father. The AAO notes that there was nothing from a doctor indicating that the applicant's parents-in-law are suffering from any medical conditions and/or that the applicant gives any assistance to them. Additionally, the applicant's parents-in-law are not qualifying relatives for a waiver under section 212(a)(9)(B)(v) of the Act. The AAO finds that the applicant failed to establish that her husband would suffer extreme hardship if he joined her in Russia.

In addition, counsel does not establish extreme hardship to the applicant's husband if he remains in the United States, maintaining his employment and in close proximity to his parents. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's husband states he cannot afford to pay for childcare for his son and he "would never trust [his] son to a babysitter." The AAO notes that it has not been established that the applicant's spouse is unable to provide or obtain adequate care for his son in the applicant's absence or that this particular hardship is atypical of individuals separated as a consequence of removal or inadmissibility. In a letter dated January 2007, the applicant states her husband has to pay all of her expenses in Russia. The AAO notes that beyond generalized assertions regarding country conditions in Russia, the record fails to demonstrate that the applicant will be unable to contribute to her family'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).

United States court decisions have repeatedly 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 Board 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, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), 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, supra*, the Ninth Circuit Court of Appeals held further 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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.