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

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U.S. Citizenship  
and Immigration  
Services

H2

FILE:

Office: PROVIDENCE, RI

Date: SEP 29 2009

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(h)

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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The application was denied by the Field Office Director, Providence, Rhode Island, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Belarus and citizen of the former U.S.S.R. who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant's spouse and stepdaughter (daughter) are U.S. citizens and his son is a lawful permanent resident. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his family.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Field Office Director's Decision*, at 2-3, dated July 21, 2009.

On appeal, counsel states that the applicant's inadmissibility to the United States would cause extreme hardship to his spouse, daughter and son. *Brief in Support of Appeal*, at 2, dated August 14, 2009.

The record includes, but is not limited to, counsel's brief; a psychological evaluation of the applicant, his spouse and son; country conditions information on Belarus; the applicant's spouse's statement; the applicant's son's statement; and the applicant's daughter's statement.

The record reflects that the applicant was convicted under 18 U.S.C. § 371 of Conspiracy to Impede the Collection of Income Taxes and was convicted for this offense on May 19, 1998. The AAO notes that the applicant is not eligible for the petty offense exception located at section 212(a)(2)(A)(ii)(II) of the Act, as the offense is a class D felony punishable by a sentence of at least five years, but less than ten years. The AAO finds that he is inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for committing a crime involving moral turpitude.<sup>1</sup>

Section 212(a)(2)(A) of the Act states, in pertinent parts:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—
  - (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

- (h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if

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<sup>1</sup> The AAO will not address whether the applicant's conviction under 42 U.S.C. § 1320(a) for Illegal Remuneration in Health Care Programs involves moral turpitude.

- (1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien.

The AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case the qualifying relatives are the applicant's spouse and two children. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to a qualifying relative must be established whether the qualifying relative relocates with the applicant or remains in the United States, as the qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that the qualifying relative relocates to the former U.S.S.R, potentially Belarus, the country of the applicant's birth and his family's residence prior to their settlement in the United States in 1990. Counsel states that the applicant's spouse has two sisters who reside in Buffalo and she is close to them, it is likely that the applicant would be removed to Belarus, the applicant fears the hardship his removal would have on his family, they have no professional or familial connections to Belarus, they do not have knowledge of the Belarusian culture, they do not know how they would support themselves emotionally or financially in Belarus, they practice the Jewish faith, the State Department reports numerous anti-Semitic acts without response from the government, the applicant's spouse would be unable to find an equivalent dental assistant position or salary, the applicant and his spouse own a home and their son resides with them, and the applicant's son is unlikely to be able to secure equivalent employment in Belarus. *Brief in Support of Appeal*, at 8-10. The AAO notes that the claims of financial hardship are not supported with documentary evidence. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). However, the record does support counsel's claims regarding anti-Semitic sentiment in Belarus. Country conditions materials in the record indicate that in 2008

there were numerous anti-Semitic acts and attacks on religious monuments, buildings and cemeteries in Belarus with little discernible response from government authorities. *Background Note: Belarus, U.S. Department of State*, February 2008. The AAO notes that the applicant's family practices the Jewish faith. Further, it finds the record to reflect that the applicant's qualifying relatives entered the United States as refugees from the former U.S.S.R. As such, it finds the applicant to have established that they would experience extreme hardship upon relocation to the former U.S.S.R.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. Counsel states that the applicant and his daughter are extremely close, he visits her weekly, he supports her financially and emotionally, he is extremely close with her two children, and he offers great support for her through his time and assistance to her and the children. *Brief in Support of Appeal*, at 5-6. The applicant's daughter states that the applicant is the most caring and loving person she knows, she is a single mother and the applicant has been a big help, the applicant visits every weekend, it would be very difficult to raise her two children without her parents, and she and her children would suffer emotionally if the applicant were removed. *Applicant's Daughter's Statement*, at 1-2, dated March 6, 2008.

Counsel states that the applicant's spouse has resided with the applicant since his date of entry. *Brief in Support of Appeal*, at 6. The applicant's spouse states that she has had the perfect life with the applicant, raising two beautiful children; and the applicant is the most loving and caring man that she has ever met. *Applicant's Spouse's Statement*, dated April 2, 2008

Counsel states that the applicant's son lived with his parents throughout his undergraduate education and he is very reliant on the applicant for financial and emotional support. *Brief in Support of Appeal*, at 7. The applicant's son details the close relationship that he has with the applicant. *Applicant's Son's Statement*, at 1-2, dated March 18, 2008

The applicant, his spouse and their son were evaluated by a psychologist who states that the applicant's spouse has suffered from at least two prior episodes of depression in her life and would have a recurrence of major depression in the absence of the applicant, the applicant's son has multiple risk factors for developing significant depressive illness and has begun to suffer from symptoms of clinical depression, and the applicant's departure would place his son at a heightened risk for major depression. *Psychological Evaluation*, at 28, dated March 17, 2008. The AAO notes that the submitted evaluation is based on one interview with the applicant, his spouse and son. The AAO also notes that the psychologist's mental health prognosis for the applicant and his spouse is based, in part, on her determination that they have previously experienced episodes of major depressive illness, which will recur when triggered by a significant relationship loss. This diagnosis of past depressive illness is, however, based on the applicant's and his spouse's recounting of what they remember of their reactions to previous events in their lives, rather than a review of contemporaneous medical documentation or prior mental health evaluations. Accordingly, the AAO finds the submitted evaluation to be of limited evidentiary value to a determination of extreme hardship.

The record includes financial documentation relating to the applicant and his family, but the material submitted does not include evidence of the applicant's financial support of his son or daughter. Neither does it demonstrate that the applicant's spouse would experience financial hardship in the applicant's absence. The AAO also notes that there is no evidence in the record that indicates that

the applicant's qualifying relatives would experience emotional or any other type of hardship due to the applicant's return to Belarus.

The AAO finds that insufficient evidence has been presented to establish that a qualifying relative would suffer extreme hardship upon residing in the United States without the applicant.

U.S. court decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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 (9<sup>th</sup> 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. *Hassan v. INS*, *supra*, 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. 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.

A review of the documentation in the record, when considered in its totality, finds that the applicant has failed to show that a qualifying relative would suffer extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in an additional discussion of whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) 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.