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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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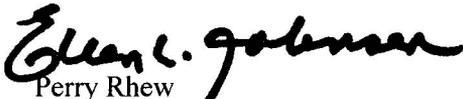
APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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 waiver application was denied by the District Director, St. Paul, Minnesota and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a citizen of the Ukraine 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 admission within ten years of his last departure from the United States. The applicant is the husband of a U.S. citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse.

The district director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to his spouse, [REDACTED] and, further, that he did not warrant a favorable exercise of the Secretary's discretion. He denied the waiver application accordingly. *Decision of the District Director*, dated September 1, 2009.

On appeal, counsel for the applicant states that U.S. Citizenship and Immigration Services (USCIS) erred in denying the waiver application as it failed to examine the hardship factors presented by the applicant in the aggregate. Counsel further states that the applicant has submitted sufficient evidence in support of his claim. *Form I-290B, Notice of Appeal or Motion*, dated September 28, 2009.

The evidence of record includes, but is not limited to: counsel's brief; a statement from [REDACTED] statements from [REDACTED] employer and supervisor, as well as her family and friends; tax returns and earnings statements for [REDACTED] banking statements for [REDACTED] [REDACTED] cancelled checks to her mother; a cell telephone billing statement; country conditions materials relating to the Ukraine and a National Institute of Mental Health printout on bipolar disorder.

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.

(iv) Tolling for good cause.-In the case of an alien who-

(I) has been lawfully admitted or paroled into the United States,

(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and

(III) has not been employed without authorization in the United States before or during the pendency of such application, the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

(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.

The record reflects that the applicant entered the United States as a J-1 exchange visitor on August 24, 2006 and was granted an extension of stay until August 20, 2007. On September 1, 2007, the applicant's second request for an extension of his nonimmigrant status was denied. The applicant, however, remained unlawfully in the United States until he departed on January 15, 2009 with an advance parole. In departing the United States, the applicant triggered the unlawful presence provisions of section 212(a)(9)(B) of the Act, which went into effect on April 1, 1997.

The AAO notes that as a matter of policy, aliens do not accrue unlawful presence and are considered to be in a period of stay authorized for purposes of section 212(a)(9)(B) of the Act during the entire period a properly filed extension of stay application is pending as long as the application is timely filed, the alien did not work without authorization before the application was filed or while it was pending and the alien maintained his or her status prior to the filing of the application. Memorandum from Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, et al., *Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act* (May 6, 2009). Accordingly, although the applicant's stay expired on August 20, 2007, he did not begin to accrue unlawful presence until September 1, 2007, the date on which his second extension request was denied. At the time the applicant departed the United States on advance parole, he had accrued more than one year of unlawful presence. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within ten years of his January 15, 2009 departure from the United States. Accordingly, he is 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. The applicant does not contest this finding.

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 U.S. citizen or lawful permanent resident spouse and/or parent of the applicant. Hardship that an applicant would experience as a result of his or her inadmissibility is not considered in waiver proceedings, except to the extent that it would cause hardship to the applicant's qualifying relative.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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)].

U.S. 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, *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 (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. *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 removed.

The AAO notes that extreme hardship to [REDACTED] must be established whether she resides in the Ukraine or remains in the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will now consider the relevant factors in the adjudication of this case.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to [REDACTED] in the event that she relocates to the Ukraine. On appeal, counsel for the applicant

states that [REDACTED] does not speak Russian and that she would be socially and linguistically isolated if she relocated to the Ukraine. Counsel also contends that [REDACTED] was raised to believe that she could do anything and wants to have a life outside the home, and that moving to the Ukraine, where she would be unable to obtain employment, would injure her pride and bring about a loss of identity and professional satisfaction. The applicant's spouse, counsel asserts, has no connection to the Ukraine, but has deep family and community ties to Minnesota. Counsel also contends that visits with family would impose a substantial financial burden in light of the distance between the United States and the Ukraine.

Counsel points out that [REDACTED] safety could be at risk in the Ukraine based on the dramatic economic downturn taking place there, which has resulted in growing income disparities. Counsel notes that country conditions materials in the record indicate that, based on these income disparities, U.S. citizens may be more vulnerable to targeting by criminals and that Ukrainian authorities have shown little interest in responding to crimes against Americans and treat sexual crimes with less seriousness than do U.S. lawful enforcement officials. Counsel also asserts that [REDACTED] has a history of cancer and mental illness in her family and is, therefore, concerned about the level of medical care that would be available to her in the Ukraine. Counsel notes that psychiatric care in the Ukraine lags behind that in the United States and that [REDACTED] would have to arrange for medical evacuation to obtain care that conforms to U.S. standards.

In a statement, dated May 7, 2009, [REDACTED] states that she has no family in the Ukraine and has never been to the Ukraine. Leaving her family, [REDACTED] asserts, would hurt and scare her, and she would be devastated if something happened to her grandmother, who suffered a stroke several years ago and is in declining health. [REDACTED] also states that her mother has high blood pressure and that she wants to be available to her mother and grandmother if they need her. [REDACTED] reiterates that she is concerned about the availability of health care for herself in the Ukraine because of her family history of bipolar disorder and cancer. She asserts that her brother may be showing signs of bipolar disorder and that her grandmother had breast cancer and her grandfather had leukemia.

[REDACTED] also states that she is terrified of moving to a country where English is not spoken and that she would have to rely on the applicant for everything, including communicating with his family as they speak no English. [REDACTED] also states that Ukrainian culture is male-dominated and, from what the applicant has told her, Ukrainians would not be very accepting of her as she would want to work outside the home in a society that expects women to stay home and raise their children. [REDACTED] also states that obtaining employment would be difficult because of her inability to speak Russian, because she does not have a college degree and because there are few employment opportunities in the Ukraine.

A May 6, 2009 letter from [REDACTED] employer, a chiropractor, states that he believes that she would find it hard to assimilate to the Ukraine and would not be happy in that area of the world. Eventually, he asserts, [REDACTED] would have to move back to the United States, thereby destroying her marriage.

The AAO notes that the applicant's spouse does not speak Russian or Ukrainian, and acknowledges the impact that her lack of language skills would have on her ability to seek employment and enter into Ukrainian culture and society. When considered in combination with the disruptions and difficulties normally created by relocation, the AAO finds the record to establish that relocation to the Ukraine would result in extreme hardship for [REDACTED]

The second part of the analysis requires the applicant to prove that [REDACTED] would suffer extreme hardship if she remains in the United States without the applicant. Counsel states that [REDACTED] has a close relationship with her mother, brother and paternal grandmother, but has a history of distrusting men because her father, who suffers from bipolar disorder and has been in prison, has been largely absent from her life. Counsel asserts that, if the applicant is removed, [REDACTED] would suffer a devastating emotional loss reminiscent of the abandonment she felt as a child as a result of her father's bipolar disorder and imprisonment. Counsel states that the applicant is providing invaluable emotional support to [REDACTED] as she attempts to reestablish a relationship with her father who is now out of prison.

Counsel also states that the applicant and his spouse live with his mother-in-law to save money but that [REDACTED] earns barely enough to meet their expenses and she is concerned that she would be unable to send money to the applicant in the Ukraine if he is unable to find employment. Creating additional hardship for [REDACTED], counsel asserts, is her desire to have children, which she will not do if there is a possibility that the applicant would be absent from their lives as her father was absent from hers.

[REDACTED] in her May 7, 2009 statement, asserts that her parents divorced when she was 13 years of age as a result of her father's bipolar disorder. She states that she had difficulty relating to men until she met the applicant. [REDACTED] also states that she and the applicant live paycheck to paycheck and it would be even harder for her financially without the applicant. She lists their monthly expenses as: \$500 for rent, \$435 for consolidated debt, \$115 for the telephone, \$400 for food, \$150 for clothes and \$200 for gasoline. [REDACTED] also states that the applicant does work around her mother's house helping to save on expenses. If the applicant were removed, [REDACTED] states that it is unlikely he would find employment and she would have to support him. The applicant, [REDACTED] asserts, has not used his degree in several years and would have to start his education over again to familiarize himself with changes in his field. [REDACTED] further states that applicant would have to move to Kiev to obtain employment and that such a relocation would be nearly impossible because of the costs involved.

The chiropractor for whom [REDACTED] works, states, in his May 6, 2009 letter, that she depends on the applicant for her emotional well-being and there have been times when she has become distraught after receiving bad news about the applicant's immigration case. After a recent episode, the chiropractor states, he had to send [REDACTED] home because she was unable to function. He contends that, if the applicant were removed, [REDACTED] would be unable to function, perhaps for several months, and that, in such a case, he would have to replace her. The chiropractor also states that, if the applicant were removed, [REDACTED] would find it hard to trust another relationship for a long time.

Based on its review of the record, the AAO does not find that the applicant has established that [REDACTED] would suffer extreme hardship if he were removed and she remained in the United States. The AAO notes the claims made by counsel and [REDACTED] regarding the negative impacts that [REDACTED] father has had on her life as a result of his mental illness and imprisonment, and her resulting emotional dependence on the applicant. However, it finds the record to lack the documentary evidence, e.g., medical or legal documentation, to support these claims. While the AAO acknowledges the May 3, 2009 statement made by [REDACTED] mother regarding her ex-husband's mental illness and the submitted article on bipolar disorder, neither is proof that [REDACTED] father has bipolar disorder or has been imprisoned. Further, the AAO notes that the record does not document, e.g., an evaluation by a licensed mental health professional, how [REDACTED]'s emotional/mental status has been affected by her childhood experiences. The record also fails to include documentary evidence that [REDACTED] grandmother and grandfather have had cancer or that she has a higher cancer risk as a result. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. 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). Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record also fails to establish that [REDACTED] would experience financial hardship in the applicant's absence. Although, the record contains checks for varying amounts that [REDACTED] has written to her mother, the record is not clear as to the purpose of such checks, as none is for the \$500 rent that [REDACTED] indicates she is paying on a monthly basis. The record also fails to include documentation in support of the majority of the other monthly expenses claimed by [REDACTED] with the exception of a \$115 telephone billing statement and the \$434.22 consolidated debt payment shown in her banking statements. The record also fails to demonstrate that [REDACTED] would be required to support the applicant if he returned to the Ukraine. While the record contains a media article relating to the serious economic problems faced by the Ukraine, the article does not establish that the applicant, who is said to hold a master's degree in economics, would be unable to find employment if he returned home. The AAO also notes that both of the applicant's parents live in the Ukraine and the record fails to indicate that they would be unable or unwilling to assist him financially if he were to be removed.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection, as well as emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship and, thus, the familial and emotional bonds exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship that meets the standard

in section 212(a)(9)(B)(v) of the Act be above and beyond the normal, expected hardship involved in such cases. In the present case, the hardships that would be experienced by [REDACTED] even when considered in the aggregate, do not rise above the hardship normally experienced by individuals whose spouses reside outside the United States as a result of removal or exclusion. Accordingly, the AAO does not find the applicant to have established that [REDACTED] would face extreme hardship if his waiver request were denied and she remained in the United States.

In that the record does not establish that [REDACTED] would experience extreme hardship both in the Ukraine and in the United States, the applicant has failed to establish statutory eligibility for a waiver under section 212(a)(9)(B)(v) of the Act. As the applicant is statutorily ineligible for relief under 212(a)(9)(B)(v), no purpose would be served in discussing whether he 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.