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



U.S. Citizenship  
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FILE:



Office: MOSCOW

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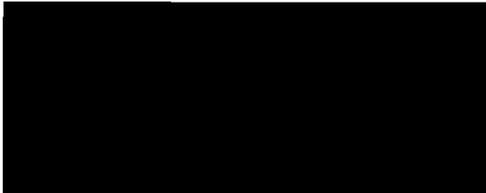
IN RE:

Applicant:



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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew

Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, 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 under 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 been convicted of committing crimes involving moral turpitude. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that her admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. The applicant filed a timely appeal.

On appeal, counsel states that the applicant was convicted under Article 173 of the Criminal Code of the Russian Federation of illicit entrepreneurial activity and under Article 187, Section 2, preparation or sale of counterfeit credit or payment cards, as well as other payment documents by an organized group. Counsel avers that the judge ordered that the applicant serve two years and six months in prison, and pay a fine of 100,000 roubles.

Counsel contends that a waiver of inadmissibility is not required because the submitted affidavits of the government investigator and witnesses reveal that the applicant was the victim of a wrongful prosecution and conviction that was engineered by her former husband, who is a high-ranking official in the Russian Ministry of Internal Affairs in Rostovm.

Counsel declares that USCIS failed to correctly consider that the applicant was wrongfully prosecuted. Counsel, citing section 40.21(a) of Chapter 9 of the Foreign Affairs Manual (FAM), states that consular officers are permitted to disregard politically motivated convictions. Moreover, counsel cites *Tahan v. Hodgson*, 662 F.2d 862, 864 (D.C. Cir. 1981), and states that a foreign judgment need not be recognized for immigration purposes if it is "repugnant to fundamental notions of what is decent and just." Finally, counsel discusses corruption in government and law enforcement in Russia, conduct of the applicant's former husband, irregularities in the applicant's trial, and why the applicant did not commit the crimes of which she was convicted.

Inadmissibility for having been convicted of committing crimes involving moral turpitude is under section 212(a)(2)(A)(i)(I) of the Act.

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

- (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.

The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record reflects that from November 2004 to March 2006 the applicant and co-defendants were found guilty of committing crimes under clauses 187.1 and 173 of the Russian Federation Criminal Procedural Code. The applicant's sentence states, in part, that the applicant used her official position at Akropol Bank and Guta-Bank to provide checkless registration; open false bank accounts for enterprises and obtain money from those accounts; keep and give criminal group members counterfeit passports, stamps, and facsimile of signatures of false organization heads; consult the criminal group members about bank operations and make activities of false enterprises look legal; and get fees for carrying out criminal acts on behalf of the criminal group. For the crimes under clause 187.1, the applicant was ordered to serve two years and three months imprisonment and a fine of 100,000 roubles, and for crimes under clause 173 it was one year and a half of imprisonment.

The AAO finds that the criminal acts of which the applicant was convicted involve moral turpitude in view of *Jordan v. DeGeorge*, 341 U.S. 223, 232 (1951), wherein the U.S. Supreme Court stated that "[t]he phrase 'crime involving moral turpitude' has without exception been construed to embrace fraudulent conduct."

Counsel claims that the charges were fabricated and engineered by the applicant's former husband. In support of this claim, the applicant submits an affidavit from an individual claiming to be a government investigator in the applicant's case, and affidavits by ██████████ Belikova ██████████ and ██████████. Counsel argues that in accordance with the FAM, convictions such as the applicant's, which are based on political motivations, can be disregarded. Also, counsel contends that in view of *Tahan* a foreign judgment that violates American public policy should not be recognized for immigration purposes.

We do not find counsel's arguments persuasive. In general, collateral attacks on a conviction do not operate to negate the finality of the conviction unless and until the conviction is overturned. *In Re Max Alejandro Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996) (citations omitted). A collateral attack on a judgment of conviction cannot be entertained "unless the judgment is void on its face," and "it is improper to go behind the judicial record to determine the guilt or innocence of an alien." *Id.*

Moreover, the AAO notes that section 40.21(a) of the FAM states that a “purely political offense” is an offense that resulted in a conviction “obviously based on fabricated charges.” We find that in the instant case, the statements by the applicant and her son, the alleged government investigator and [REDACTED] which are intended to portray the applicant as not having engaged in any criminal conduct, do not fully demonstrate that the applicant’s conviction was “obviously based on fabricated charges.”

For example, [REDACTED] states in the affidavit dated September 3, 2009 that:

[A] high-ranking official from the Main Department of Internal Affairs made arrangements about bringing [the applicant] to responsibility as an accused, her arrest and detention. In July 2009 that official was dismissed from the Main Department of Internal Affairs in Rostov region, because of abuse of office.

For the purpose of personal safety I can not [sic] give you the name of the ex-official from the Main Department of Internal Affairs. The American Embassy shall take into consideration that there was not revealed any direct evidence of [the applicant’s] participation in the crime, as the inquiry progressed. The indirect evidence (witnesses’ testimonies) was not considered by the court in favor of [the applicant.]

Not only are we unable to verify that [REDACTED] was a government investigator in the applicant’s criminal case, her statement is vague and is not explicit in declaring that the applicant’s former husband had the applicant arrested and convicted based on false charges. It is not clear from the statement that the applicant did not commit any of the crimes of which she was convicted. In addition, the AAO notes that it does not know the testimony or evidence given in the applicant’s criminal proceeding. Indeed, because the applicant did not submit into the record the transcript of her criminal proceeding we cannot ascertain whether the applicant and the individuals mentioned above testified in the criminal proceeding, and what, if any, evidence was disregarded.

Thus, without benefit of the applicant’s entire record of conviction, or evidence that more definitively shows that her crimes were purely political offenses, we cannot conclude that the U.S. government has erred in finding her inadmissible. The burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Consequently, we affirm that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section provides, in pertinent part:

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

....

(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 . . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative in this case is the applicant's fiancé. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 631-32; *Matter of Ige*, 20 I&N Dec. 880, 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity

depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

In rendering this decision, the AAO will consider all of the evidence in the record.

Counsel states that extreme hardship to the applicant's fiancé was not properly considered. Counsel avers that the applicant met her fiancé through a pen-pal website in July 2001, and communicated with him for 15 months before meeting him in Spain in September 2002. Counsel states that before the applicant's arrest in March 2006, the applicant and her fiancé met in Prague in 2003 and in Moscow in 2004 and 2005. Counsel indicates that the applicant's fiancé proposed marriage in September 2005, and the applicant and her fiancé met again in 2008 in Ukraine, and in 2009 in Thailand. Counsel indicates that the applicant and her fiancé have a close relationship, and that the applicant's fiancé has been depressed without the applicant, and will have declining health and financial difficulties if the separation continues. Counsel maintains that [REDACTED] indicates that the applicant's fiancé, who is 55 years old, is emotionally distressed about the applicant's safety in Russia. Counsel discusses the age of applicant's fiancé and the impact to his health if he remains single, and the consequences to the applicant's health if she lives in Russia.

Counsel avers that the applicant's fiancé's business, which is the management of commercial properties, requires his presence in the United States. Counsel states that relocation to Russia will cause the applicant's fiancé to be separated from his mother, who has health problems and with whom he has a close relationship and helps; and from his daughters, particularly his youngest daughter, who counsel avers will not be permitted to travel to Russia. Furthermore, counsel declares that the applicant's fiancé will not be able to continue making spousal and child support payments if he relocated to Russia. Counsel maintains that the applicant's fiancé is active in his community. Counsel indicates that the applicant's fiancé would be forced to liquidate his assets if he relocated to Russia, and that he would not be able to establish a profitable business there due to corruption, violence, and difficulties in obtaining a work visa and learning Russian. In addition, counsel maintains that the applicant's fiancé will be in danger in Russian due to the applicant's former husband. Lastly, counsel maintains that the applicant's fiancé will have substandard medical care and a lower life span in Russia, and will be a victim of crime because he is a foreigner.

We note that the applicant's fiancé conveys in the affidavit that he cannot live in Russia because he would lose the relationship that he has with his daughters and would be without gainful employment in Russia. He states that he does not speak Russian and is a small scale real estate developer, which will not make him marketable. The applicant's fiancé indicates that he has a pending apartment building construction project in [REDACTED]. We observe that the record contains a building permit receipt reflecting fees paid by [REDACTED] in the amount of \$52,070 in September 8, 2009. The building permit indicates the work will be for 21 dwelling units and commercial space. We further observe that the record shows that the applicant's fiancé has 50 percent ownership interest in [REDACTED]. The applicant's fiancé states that he is actively involved in projects and maintaining his real estate properties. Lastly, he conveys that his is anxious about the applicant's living in near proximity to her former husband.

Lastly, we note that [REDACTED] states in the evaluation dated August 30, 2009, that the applicant's fiancé is unable to leave his life in the United States because he takes care of his 79-year-old mother, and has two daughters. She avers that the applicant's fiancé has court ordered shared custody of his youngest daughter, who was born on December 12, 1995, and that his former spouse will not allow their daughter to visit or move to Russia. [REDACTED] indicates that the applicant's fiancé also has a close relationship with his oldest daughter, who attends college and lives near him.

The asserted hardships of having to relocate to Russia are not finding employment, separation from family members, not being able to continue projects in the United States, substandard medical care, and a lower life span.

However, we observe that the financial statement dated June 20, 2008 reflects that the applicant's fiancé has net worth assets of \$10,975,190. In view of such considerable financial resources, we find that the applicant's fiancé will be able to live without any significant financial hardship in Russia and that he will be able to continue in child and spousal support payments. We note that the applicant's fiancé is a 50 percent owner of [REDACTED] and has not fully demonstrated that his presence is required throughout construction of the project in the [REDACTED] or for full-time management of his properties.

In addition, we take notice that the family court documents dated August 11, 2005 do not explicitly state that the applicant's fiancé has joint physical custody of [REDACTED] and that his former spouse will not allow their daughter to visit Russia.

Furthermore, while we acknowledge that the applicant's fiancé has apprehensions about the applicant's former husband, we point out that his conjectures are not corroborated by any court records, but are based entirely on statements made by the applicant and others and on generalized information about corruption in Russia. Moreover, we take notice that the applicant's fiancé traveled to Russia on two separate occasions without incident.

Also, the applicant has not demonstrated that her fiancé will not be able to obtain medical care that is comparable to what he now has in the United States or that his circumstances in Russian will reduce his life span.

Lastly, we recognize that the applicant's fiancé has a close relationship with his mother; however, his mother indicates in the letter dated August 16, 2009, that she does not have any serious health problems that necessitate daily assistance from the applicant.

The applicant's fiancé contends that he has a close relationship with the applicant and will experience emotional hardship without her. [REDACTED] states in the psychological evaluation dated August 30, 2009 that "[i]t is reported that in 2006 [REDACTED], a Russian citizen, was arrested shortly after her ex-husband learned of her engagement and plans to come to the United States to marry [REDACTED]." [REDACTED] further states that "[REDACTED] clearly identifies this incident as the trigger for [his] Adjustment Disorder." [REDACTED] also avers the following:

The severity of symptoms forced ██████ to seek medical assistance from his primary care physician. A series of medications . . . were prescribed.

In spite of medication attempts, ██████ continued to suffer severe symptoms of anxiety and depression with significant distress and emotional impairment. Approximately one year ago, ██████ sought the care of a Psychiatrist, ██████. ██████ discontinued the above listed medications . . . None of these medications have provided any measurable relief, suggesting that the cause stems from a situational rather than a psychiatric origin. ██████ has no prior history of a mood related disorder.

██████ conveys that the applicant's fiancé has an "intense fear and strong sense of helplessness" for the applicant's safety because the applicant's former husband's high ranking position reportedly enabled him to use his position to threaten the applicant's safety and wellbeing.

We observe that the record reflects that the applicant met her fiancé through the Internet in 2001, and that she has spent short periods of time with him in 2002, 2003, 2004, 2005, and 2008. Furthermore, we note that in the letter dated April 25, 2008 the applicant's fiancé states to the applicant the following:

I have recently visited my physician for the normal annual physical examination. The doctors [sic] says I am healthy and all is well. I will tell you now that I have recovered from depression. After I became divorced and you were arrested, I became depressed. It was serious. . . . I was very sad for ██████ I was not happy to do anything. I was lonely for you, I was lonely to live by myself, I was not happy that I was required to pay enormous sums of money to ██████, I was not happy to leave the house I owned before I ever met Nancy, my father was dying. There were many things simultaneously causing me to be discouraged. Of course, I completely understand that your situation was extremely worse than mine. That also was discouraging for me. I felt helpless to do anything to assist you. I was worried about you. As time has passed, I have regained a normal disposition, I am no longer depressed. I know that you will be released later this year, I have a home that is pleasant, my daughters are with me frequently and I no longer owe large sums of money to Nancy.

While the AAO recognizes that ██████'s conclusions are based on information given by the applicant's fiancé, we find that statements made by the applicant's fiancé to ██████ are inconsistent with evidence in the record. For example, ██████ believes the applicant's fiancé to have an ongoing clinical disorder since the applicant's arrest. This is inconsistent with the April 25<sup>th</sup> letter in which the applicant's fiancé conveys that "[a]s time has passed, I have regained a normal disposition, I am no longer depressed," and that he has "recovered from depression." Moreover, it is clear from the letter that the applicant's fiancé attributes his depression to a combination of factors, not just the applicant's arrest. Thus, the AAO will give proper consideration and weight to ██████ evaluation in so far as it is consistent with the other evidence in the record.

Substantial weight is given to separation of spouses from one another in the hardship analysis; however, in view of the brief periods of time that the applicant and her fiancé have personally spent together in the course of their relationship, which began in 2001, we find that the record fails to establish that the applicant's fiancé will experience extreme emotional hardship if he remains in the United States without the applicant.

Based on the record, we find the applicant has failed to establish extreme hardship to a qualifying relative under section 212(h) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed and the waiver application will be denied.

**ORDER:** The appeal is dismissed.