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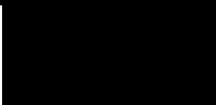
U.S. Citizenship
and Immigration
Services

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FILE:



Office: MOSCOW, RUSSIA

Date: JUN 25 2007

IN RE:



APPLICATIONS:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge (OIC), Moscow, Russia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native of Georgia and a citizen of Armenia 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 his last departure from the United States. The record indicates that the applicant is married to a naturalized citizen of the United States. 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 his United States citizen spouse.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on his spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated May 11, 2006.

On appeal, the applicant states his wife “suffers from multiple diseases and if [he] will not join her she will face extreme hardship.” *Form EOIR-29*, filed June 14, 2006.

The record includes, but is not limited to, a letter from the applicant, a letter from the applicant’s wife, letters from [REDACTED] and [REDACTED] regarding the applicant’s wife’s psychological/mental health and her medical conditions. 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 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.

In the present application, the record indicates that the applicant entered the United States on a B2 nonimmigrant visa on April 21, 1999, with authorization to remain in the United States until October 20, 1999. On or about March 9, 2000, the applicant's first wife, [REDACTED] filed an Application for Asylum and for Withholding of Removal (Form I-589), which was denied on August 20, 2001. On June 9, 2002, the applicant departed the United States. On June 23, 2005, the applicant and [REDACTED] divorced in Armenia. On July 6, 2005, the applicant and [REDACTED] a naturalized United States citizen, married in Armenia. On August 22, 2005, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf and a Form I-601. On or about September 27, 2005, the applicant filed an Application for Immigrant Visa and Alien Registration (DS-230). On May 11, 2006, the OIC denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his United States citizen wife. Additionally, the OIC found the applicant accrued unlawful presence from October 20, 1999, the date his authorization to remain in the United States expired, until June 9, 2002, the date the applicant departed from the United States. The applicant is seeking admission into the United States within 10 years of his June 9, 2002 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 himself 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 (BIA) 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 asserts that his spouse will face extreme hardship if he is not admitted to the United States. The applicant's spouse states that for "more than seven years [she has suffered] from Grave's disease (Hyperthyroidism)...[and she] needs assistance," which the applicant can provide. *Letter from* [REDACTED] dated May 25, 2006. [REDACTED] states the applicant's wife is "very ill and disabled for any physical activities due to her condition. She had Radioactive Iodine ablation for Grave's disease Hyperthyroidism. She also suffers from cervical strain/sprain failure of NSAID's, arthritis, dizziness, nausea, vomiting, muscle and bone pain, depression/insomnia, palpitations, anxiety, sinus tachycardia, [and] myalgia." *Letter from* [REDACTED], dated May 25, 2006. Additionally, [REDACTED] states the applicant's wife suffers from "a medical condition which is making it difficult for her to work." *Letter from* [REDACTED], M.D., Ph.D., dated May 24, 2006. [REDACTED] diagnosed the

applicant's wife with Major Depression and he states the applicant's wife "will be greatly helped by the presence of a friend, relative or spouse who she can rely on and can assist her and provide emotional as well as financial support." Letter from [REDACTED] M.D., dated May 22, 2006. The AAO finds that it has been demonstrated that the applicant's wife suffers from various medical and mental conditions. [REDACTED] and [REDACTED] state the applicant's wife would benefit from her husband supporting her. See Letter from [REDACTED], M.D., *supra* ("She needs full support physically and emotionally from her spouse or family member."); see also Letter from [REDACTED] M.D., Ph.D., *supra* ("She would benefit from the personal and financial support of her husband."). The applicant's wife, [REDACTED], and [REDACTED] state that the applicant's wife needs her husband for financial support; however, there is no evidence that the applicant has ever contributed financially to his wife.

The record establishes that the applicant's spouse would suffer extreme hardship if she joins the applicant in Armenia, because of her medical and mental conditions. See letter from [REDACTED], *supra* ("While I was in Armenia for more than 4 months, I was unable to find any help from any doctors' because they did not understand what kind of treatment is Radioactive Iodine and I was left without any medical help or medications."); see also letter from [REDACTED] ("[REDACTED]...came to Armenia 04/01/2005 and stayed here for about 5 months...Unfortunately the level of medicine in Armenia is not as high as in the US and [REDACTED] needed to return to the US to get her treatment."). However, the applicant did not establish that his wife would suffer extreme hardship if she stays in the United States without the applicant. The applicant's wife states she needs the applicant to help her; however, the applicant's wife has children whom reside in the United States and it has not been established that they could not help care for their mother. The applicant and his wife have never lived together and it has not been established that his wife cannot provide for her daily needs without him. Additionally, the applicant's wife has had Grave's disease for more than seven years and has been able to care for herself without the applicant. The record fails to demonstrate that the applicant is unable to contribute to his wife'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 his wife if she remains in the United States.

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 wife will endure, and has endured, hardship as a result of separation from the applicant; however, he has not demonstrated extreme hardship if she remains in the United States, with access to proper medical treatment for her conditions.

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 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.