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FILE:

Office: MOSCOW, RUSSIA

Date:

MAR 23 2007

IN RE:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Officer in Charge, Moscow, Russia, denied the waiver application, and it 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 pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 212(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 applicant is the spouse of a U.S. citizen. She 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 spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated February 7, 2005.

The record reflects that, on May 15, 1998, the applicant was admitted to the United States as a B-2 nonimmigrant visitor. The applicant remained in the United States after her nonimmigrant status expired on November 15, 1998. On November 27, 2000, the applicant married [REDACTED]. On May 30, 2001, the applicant returned to Russia where she has since resided. On September 29, 2003, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On December 24, 2003, Mr. [REDACTED] filed a Petition for Alien Fiancée (Form I-129F) on behalf of the applicant, which was approved on February 23, 2004. On July 14, 2004, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel asserts that [REDACTED] has had a significant setback physically and emotionally because of the prospect that he will not see his wife in the United States. As a consequence of the denial of the waiver, counsel states, [REDACTED] requires medical treatment. *See Counsel's Brief* dated March 4, 2005. In support of these assertions, counsel submitted the referenced brief and an affidavit from [REDACTED]. The entire record was reviewed and considered in rendering a decision in this case.

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.

The officer in charge based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's admission to being unlawfully present in the United States for more than one year. Counsel does not contest the officer in charge's determination of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(a)(9)(B)(v) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

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. 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).

Since an applicant's qualifying relative is not required to reside outside of the United States as a result of denial of the applicant's waiver request, an applicant must establish that the qualifying relative would suffer extreme hardship whether they remained in the United States or accompanied the applicant to the foreign country of residence.

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).

The record reflects that [REDACTED] is a native of Russia who became a lawful permanent resident in 1997 and a naturalized U.S. citizen in 2003. The applicant and [REDACTED] do not have any children together. Mr. [REDACTED] has at least one adult child from a prior relationship who is a U.S. citizen. The applicant has an adult daughter from a prior relationship who is a native and citizen of Russia. The applicant and [REDACTED] are in their 50's and [REDACTED] may have some health concerns.

Counsel asserts that [REDACTED] has had a significant setback physically and emotionally due to the denial of the applicant's waiver and he is now under medical treatment, although it is far too early in the treatment to have a definitive report. Counsel asserts that the applicant and [REDACTED] are not a young couple, but two older people, in which the U.S. citizen is experiencing increased depression, sleeplessness and a reactive conversion of his anger into involuntary self-destructive behavior. [REDACTED] in his affidavit, states that when the applicant left the United States he had expected her to return within a year and that they have been separated ever since. [REDACTED] states that, in August 2002, he was involved in a serious no-fault car accident, in which he sustained serious head, neck and spine injuries for which he was under medical care for a long time. He states that he continues to suffer and it is hard for him to go through this without his wife's support and help. He states that recently his anger has turned to depression and he does not sleep well and does not care to eat. He states that his friends have advised him to seek medical care and that he will, but what he really needs is his wife and to have the idea of the United States as a fair and just government restored. He states that neither his wife nor her daughter can earn a living in Russia and he supports them by sending them money. He states that in his current physical condition he is finding it more difficult to work. Finally, he states that he and the applicant are not young and that every day they are apart their lives shorten.

The AAO notes the statements made by counsel and the applicant concerning the emotional and physical effects of [REDACTED] separation from the applicant. The record, however, does not contain evidence that [REDACTED] has received treatment or evaluation for any mental or physical illnesses. Additionally, the AAO notes that there was no mention of any psychological or physical problems in statement that [REDACTED] submitted to support the Form I-601.

While [REDACTED] indicates that the applicant and her daughter are unable to support themselves in Russia, no evidence has been offered in support of this assertion. The Biographical Information Sheet (Form G-325) indicates that prior to her travel to the United States, from February 1997 until May 1998, the applicant was employed as a travel agent. There is no evidence in the record that establishes that [REDACTED] is unable to earn sufficient income to support himself and his family and there is no evidence in the record to indicate that he is unable to perform daily activities or work duties due to any illness. Moreover, the record indicates that [REDACTED] has family in the United States, such as his adult son, who may be able to assist him physically and financially in the absence of the applicant. The AAO acknowledges that [REDACTED] may have to lower his standard of living. However, the record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] even when combined with the emotional hardship described below.

As discussed above, there is no evidence in the record to indicate that [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon removal or that would be exacerbated by the applicant's absence. While the AAO acknowledges that [REDACTED] would experience distress and some level of depression as a result of his separation from the applicant, these are hardships that are commonly suffered by aliens and families upon removal. Moreover,

according to the record, [REDACTED] has family members in the United States, such as his adult son, who may be able to support him physically and emotionally in the absence of the applicant.

Counsel and [REDACTED] do not assert that [REDACTED] would suffer extreme hardship if he joined the applicant in Russia. The AAO is, therefore, unable to find that [REDACTED] would suffer extreme hardship should he relocate to Russia. Finally, as previously noted, [REDACTED] is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] would face the expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of 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, which 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. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. 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 an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.