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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: MOSCOW, RUSSIA Date:

**JAN 13 2009**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Excludability 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.

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).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The Officer-in-Charge, Moscow, Russia, denied the Form I-601, Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(v). **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 41-year-old native and citizen of Russia who was found inadmissible to the United States for having been unlawfully present. The record reflects that the applicant's spouse, [REDACTED] is a United States citizen. The couple was married in March 2001. The applicant entered the United States in August 2000 and remained beyond his authorized period. The applicant was granted voluntary departure until February 2001, but remained in the United States until March 2006. He presently seeks a waiver of inadmissibility in order to return to the United States.

The officer in charge determined that the applicant was inadmissible, and that he was ineligible for a waiver of inadmissibility because its denial would not result in extreme hardship to his spouse. The waiver application was denied accordingly.

On appeal, the applicant submits a letter signed by his spouse explaining in relevant part, that she loves and misses the applicant and wishes that he be allowed to return to the United States. The applicant also submits a letter from a step-child in support of his appeal. The record also contains letters from the applicant's mother, ex-wife, the applicant, a second letter from the applicant's spouse, and two unidentified letters in Russian. Further, the record includes a letter from [REDACTED] indicating that the applicant's spouse suffers from diabetes, two hospital treatment reports, bank records reflecting an over-draft, a letter from a public defender directed to the applicant's step-son, and the applicant's income tax returns.

Section 212(a)(9) of the Act, 8 U.S.C. § 1182(a)(9), 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 found the applicant inadmissible on the basis of his unlawful presence in the United States. The applicant's departure from the United States in 2006 triggered the unlawful presence inadmissibility bar. The applicant does not dispute the inadmissibility finding. The AAO therefore finds that the applicant is inadmissible as charged. The question remains whether he is eligible for a waiver under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 212(a)(9)(B)(v).

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

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).

The applicant's spouse, [REDACTED], is a 42-year-old, native-born U.S. citizen. The record indicates that she was previously married and she indicates that her marriage terminated because of domestic abuse. She has four children from that previous relationship. The record indicates that she suffers from diabetes. The record also suggests that she is not well-employed. She states that the family lost their "big house," and is facing homelessness.

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 is denied the waiver. Although the AAO recognizes the applicant's spouse's medical

and financial circumstances, the record does not establish that they are caused or related to the applicant's absence or that his return to the United States would ameliorate the family's circumstances. The AAO notes that the record does not establish that the applicant's spouse's medical condition, as an individual factor or when considered in the aggregate, demonstrates that the applicant's inadmissibility results in extreme hardship.

The AAO notes that the applicant's spouse has four children in the United States. There is no other evidence of family ties, and the record does not indicate the children's birth dates. The record also does not indicate whether the applicant's spouse would consider relocating to Russia and, if so, whether she would face extreme hardship. In this regard, the AAO notes that, as a U.S. citizen, the applicant is not required to relocate. The AAO also notes the holding in *Ramirez-Durazo v. INS*, 794 F.2d 491, 499 (9th Cir. 1986), that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient" to establish extreme hardship.

The AAO notes the applicant's spouse's claim that separation from the applicant is causing emotional hardship. Such hardship, however, is common to all individuals in the applicant's circumstances and does not rise to the level of "extreme." See *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances").

Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. 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). 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 failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. 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.