

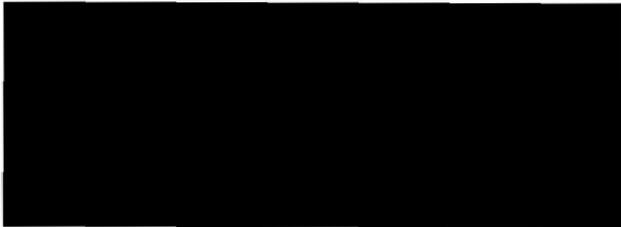


U.S. Citizenship  
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Services

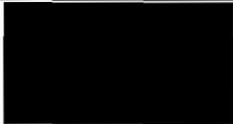
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FILE:



Office: MOSCOW, RUSSIA Date: MAR 04 2009

IN RE:

Applicant:



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:



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 "John F. Grissom".

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 sustained.

The record reflects that the applicant is a 30-year-old native and citizen of Ukraine 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 2003. The applicant entered the United States in September 2000 without inspection, and remained until January 2006. She 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 she was ineligible for a waiver of inadmissibility because its denial would not result in extreme hardship to her spouse. The officer-in-charge further found that the application should be denied as a matter of discretion. The waiver application was denied accordingly.

On appeal, the applicant, through counsel, submits a brief citing *Matter of O-J-O-*, 21 I&N Dec. 381 (BIA 1996), in support of her hardship claim. The applicant also submits a letter from a psychologist who diagnosed her spouse with Major Depressive Disorder and opined that his condition was associated with the couple's separation. The applicant further indicates that the couple's separation is causing extreme financial hardship and, in support, submits an expert opinion from a corporate executive familiar with Ukrainian businesses and a letter from the applicant's spouse's employer. The record also includes copies of phone bills, bank statements, and wire transfer receipts. Lastly, the record includes the Department of State Country Report for Ukraine, as well as letters from family members, friends and neighbors in support of the applicant's application.

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 her unlawful presence in the United States. The applicant's was unlawfully present in the United States from 2000 to 2006. The applicant does not dispute the inadmissibility finding. The AAO therefore finds that the applicant is inadmissible as charged. The question remains whether she 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 herself is not a permissible consideration under the statute.

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. at 383 (citations omitted).

The applicant's spouse, [REDACTED], is a 46-year-old, native-born U.S. citizen. The record indicates that he is well-employed as an Assistant Manager at [REDACTED]. The record further indicates that he resides in San Diego, near his family. The record establishes that the applicant's spouse was diagnosed with Major Depressive Disorder, a condition for which he has been treated by a psychologist. The record also establishes that the applicant's spouse will likely be unable to secure adequate employment in Ukraine should he choose to relocate. The record indicates that the applicant and her spouse were married in 2003, and have remained emotionally close despite their separation. Letters from family members, friends and neighbors support the applicant's claim.

The AAO finds that the applicant's spouse would face extreme hardship should he relocate to Ukraine. The record includes an expert opinion and Department of State Country Reports for Ukraine indicating that it would be unlikely that the applicant's spouse would find adequate employment as a foreign professional. The record also indicates that the applicant's spouse has no family ties in Ukraine and does not speak Ukrainian or Russian. The record suggests that the applicant would also face emotional hardship by being separated from his family in the United States.

Likewise, the record also supports a finding that the applicant's spouse would face extreme hardship should he remain in the United States, separated from her. The applicant's spouse suffers from Major Depressive Disorder which, according to his psychologist, is linked to the couple's separation. 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 (9<sup>th</sup> Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> 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 finds that the hardship claimed by the applicant goes beyond the normal circumstances faced by individuals in their situation.

The AAO therefore finds that the applicant has established extreme hardship to her 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).

The AAO further finds that the grant of a waiver is warranted in the exercise of discretion. The positive factors in the applicant's favor, such as her close relationship to her U.S. Citizen spouse and the extreme hardship he would experience as a result of her inadmissibility, as well as letters from friends and relatives noting her good character, outweigh her entry without inspection and unlawful presence in the United States.

In proceedings for 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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.