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Citizenship and Immigration Services
Administrative Appeals Office MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: MOSCOW Date: APR 23 2010

(MOS 2007617013 relates)

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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).

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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen wife.

The field office director concluded that the applicant 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 Field Office Director*, dated December 7, 2007.

On appeal, counsel asserts that the applicant did not commit fraud or misrepresentation, thus he is not inadmissible under section 212(a)(6)(C)(i) of the Act. *Brief from Counsel*, dated February 7, 2008. Counsel further asserts that the applicant's wife will suffer extreme hardship if the present waiver application is denied. *Id.* at 8-9.

The record contains a brief from counsel; statements from the applicant and the applicant's wife; documentation regarding the applicant's wife's pregnancy as of November 13, 2007; a marriage record for the applicant and his wife; a birth record for the applicant; a copy of the applicant's wife's naturalization certificate, and; information regarding the applicant's attempted entry to the United States in B-1 nonimmigrant status. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

> Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides, in pertinent part, that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien[.]

The record reflects that in November 1994 the applicant entered the United States as a B-1 nonimmigrant visitor for business, with authorization to remain for a two-week period. On December 30, 1994 he married his U.S. citizen wife. The applicant did not depart the United States until February 1995, approximately two months after the expiration of his authorized stay in B-1 status.

On May 19, 1995 the applicant attempted to again enter the United States in B-1 nonimmigrant status as a visitor for business. Although he was married to a United States citizen at the time, he denied that he had any relatives in the United States. Based on this misrepresentation, he was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for seeking to procure admission by fraud or willful misrepresentation.

On appeal, counsel asserts that the applicant did not commit fraud or misrepresentation, thus he is not inadmissible under section 212(a)(6)(C)(i) of the Act. *Brief from Counsel* at 3-8. Counsel discusses the decision of the United States Board of Immigration Appeals (BIA) in *Matter of Y-G*, 20 I&N Dec. 794 (BIA 1994), and contends that the present matter is distinguishable due to the fact that the applicant did not procure false documents or misrepresent his identity. *Id.* at 3. Counsel states that the applicant's misrepresentation was not material, as whether he was married to a lawful permanent resident[1] was "not of basic significance to the eligibility for a nonimmigrant visa." *Id.* at 5. Counsel contends that the fact that the applicant was married at the time he applied for admission did not render him "excludable based on the true facts." *Id.*

In *Matter of Y-G*, 20 I&N Dec. 794 (BIA 1994), the BIA found that an applicant did not commit fraud or misrepresentation to gain admission to the United States because he revealed his true identity and fraudulent documents to U.S. officials upon entry. Thus, the applicant was not inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation based on any representations he made to obtain his fraudulent travel documents. Essentially, the applicant was truthful at the moment that he actually applied for a benefit addressed in section 212(a)(6)(C)(i) of the Act (admission into the United States) and he did not commit fraud or misrepresentation before the individuals who were charged with administering the benefit. However, in the present matter the applicant made a material misrepresentation to former Immigration and Naturalization Service (INS) officers who were charged with determining whether he was admissible in B-1 nonimmigrant status. Thus, the facts of the present matter are distinguishable from those in *Matter of Y-G*.

Counsel asserts that the applicant could have acted on an immigrant intent when he was in the United States in 1994 when he married his U.S. citizen wife, but that he returned to Russia in compliance with the terms of his B visa. *Id.* at 6. Counsel contends that this fact supports that the applicant intended to comply with the terms of his admission in B-1 status despite the fact that he was married to a U.S. citizen. *Id.*

Whether the applicant was married to a lawful permanent resident was material to whether the applicant intended to enter the United States temporarily for business purposes as a nonimmigrant.

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[1] Although the applicant's wife is now a U.S. citizen, she was a lawful permanent resident at the time the applicant sought entry in B-1 nonimmigrant status on May 19, 1995.

Specifically, the INS officer tasked with assessing his eligibility for B-1 nonimmigrant status had to determine whether the applicant had an intent to immigrate to the United States, which is not permitted in B-1 nonimmigrant status. The fact that the applicant had married a United States citizen approximately five months prior to his attempted entry on May 19, 1995 was material to whether the applicant intended to seek lawful permanent residence during his stay. The applicant's concealment of his marriage to a lawful permanent resident cut off the material line of inquiry regarding his ties to the United States and his intentions for the country of his family's residence.

Counsel asserts that the decision of the BIA in *Matter of Bosuego*, 17 I. & N. Dec. 125 (BIA 1979), supports that the applicant's misrepresentation regarding his marital status was not material. *Id.* at 6-7. In *Matter of Bosuego* the BIA determined that an individual did not commit material misrepresentation when she indicated that she had no relatives in the United States and she had not completed her college degree, when in fact her sister resided in the United States and she had concluded her college studies. *Matter of Bosuego* at 127-29. The BIA remarked that analysis must be made of the true facts as they would have appeared to the deciding officer to determine whether the officer may have found the applicant inadmissible. *Id.* at 128. The BIA concluded that being a college graduate and having a sister residing in the United States was not sufficient evidence of an immigrant intent to render concealment of those facts a material misrepresentation in a visa application. *Id.* at 128-29. However, in the present matter, the applicant misrepresented whether he had a lawful permanent resident wife. As the applicant had previously overstayed his B-1 nonimmigrant status during the period that he married his lawful permanent resident wife, and he was attempting to return to the United States approximately five months after marrying her, the record supports that he would have been found to have an intent to immigrate to the United States had the INS officer known of the applicant's marriage. Accordingly, the applicant's willful concealment of his marriage to a lawful permanent resident was a material misrepresentation.

Counsel asserts that the United States Department of State Foreign Affairs Manual at 9 FAM 40.63, note 2, requires that an applicant procured a visa or other documentation through fraud or misrepresentation in order to be found inadmissible under section 212(a)(6)(c)(i) of the Act. *Brief from Counsel* at 7. Counsel asserts that the applicant did not use fraud to obtain his B nonimmigrant visa. *Id.* It is first noted that the Foreign Affairs Manual sets guidelines for consular officers of the U.S. Department of State, and it is not binding in proceedings before United States Citizenship and Immigration Services (USCIS). As quoted above, the plain language of section 212(a)(6)(c)(i) of the Act renders an applicant inadmissible "who, by fraud or willfully misrepresenting a material fact, seeks to procure . . . a visa, other documentation, *or admission* into the United States or other benefit provided under this Act." Section 212(a)(6)(c)(i) of the Act (emphasis added). Thus, irrespective of the manner in which the applicant initially obtained his B nonimmigrant visa, he may be properly deemed inadmissible under section 212(a)(6)(c)(i) of the Act where he has committed a material misrepresentation to procure admission into the United States using that visa. *Id.*

Counsel states that the applicant did not know that the fact of his marriage was relevant, and he stated he was not married because he did not realize the consequences of misrepresenting this information. *Id.* at 8. The applicant stated that he did not intend to lie or defraud the U.S. government. *Statement from the Applicant*, submitted on or about November 16, 2007. However, counsel's statement is not a reasonable explanation of why the applicant concealed his marriage to a

lawful permanent resident, and it does not undermine the finding that the applicant committed a willful misrepresentation.

Based on the foregoing, the applicant has not shown that he was erroneously deemed inadmissible under section 212(a)(6)(c)(i) of the Act, and he requires a waiver under section 212(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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 experiences upon deportation is not a basis for a waiver under section 212(i) of the Act; the only relevant hardship in the present case is hardship suffered by the applicant's wife. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. These 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.

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).

Counsel further asserts that the applicant's wife will suffer extreme hardship if the present waiver application is denied. *Brief from Counsel* at 8-9. Counsel states that the applicant and his wife have one U.S. citizen child, and that they will have two as of the date of his brief. *Id.* at 9. Counsel indicates that all of the applicant's wife's relatives are in the United States, and that her parents, brothers, and sisters have resided here since 1993. *Id.*

The applicant's wife asserted that she is close with the applicant and that he is a good husband. *Statement from the Applicant's Wife*, submitted on or about November 16, 2007. She indicated that all of her family members reside in the United States. *Id.* at 1. She stated that she and the applicant have a child, and that she was pregnant as of the date she issued her statement. *Id.* She explained that for years she traveled back and forth between Russia and the United States, but that she cannot continue due to the financial and emotional toll. *Id.* She expressed that she wishes for her children to attend school and grow up in the United States. *Id.*

The applicant indicated that his wife's relatives reside in the United States, and that his wife previously commuted between Moscow and Portland. *Statement from the Applicant*, submitted on

or about November 16, 2007. He stated that he wishes for his children to be raised in the United States, and he wants to be united with his family. *Id.* at 1.

Upon review, the applicant has not established that a qualifying relative will experience extreme hardship if he is prohibited from residing in the United States. The applicant has not shown that his wife will endure extreme hardship should she reside with him and their children abroad. The applicant's wife expressed that she wishes for their children to attend school and grow up in the United States, and that she has endured hardship in the past due to frequently traveling between the United States and Russia. She stated that she her family members reside in the United States, thus she will experience emotional hardship if she is separated from them. However, these consequences are common results when an individual resides abroad due to the inadmissibility of a spouse.

Federal court and administrative decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

It is noted that the applicant's wife has resided in Russia with the applicant and their child in the past, yet the applicant has not asserted that they experienced any difficulty there.

The record contains references to hardships experienced by the applicant's children. Direct hardship to an applicant's children is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. The AAO recognizes that the applicant's children will face consequences should they reside outside the United States. Yet, as noted above, the applicant has not distinguished the challenges his family would face from those commonly experienced when families reside abroad due to inadmissibility. The applicant has not established that his children will suffer consequences that can be distinguished from those ordinarily experienced, or that their hardship will elevate his wife's challenges to an extreme level.

Based on the foregoing, the applicant has not shown that his wife will encounter extreme hardship should she reside with him abroad to maintain family unity.

The applicant has not established that his wife will endure extreme hardship should she remain in the United States without him. The applicant's wife expressed that she is close with the applicant and that she does not wish to be separated from him. Yet, while the AAO acknowledges that the separation of family members often results in significant emotional hardship, the applicant has not distinguished his wife's psychological challenges from those commonly experienced when spouses reside apart due to inadmissibility.

The applicant's wife indicated that she has endured financial and emotional hardship in the past due to traveling between Russia and the United States. However, the applicant has not submitted any evidence to show his or his wife's employment, resources, or economic circumstances. The applicant has not shown that his wife will endure unusual hardship should she reside in the United States and continue to travel to Russia to visit him.

All stated elements of hardship to the applicant's wife have been considered in aggregate. Based on the foregoing, the applicant has not shown by a preponderance of the evidence that denial of the present waiver application "will result in extreme hardship" to his wife, whether she resides in the United States or abroad, as required for a waiver under section 212(i) of the Act. 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 regarding a waiver of grounds of inadmissibility under section 212(i)(1) 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.