

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

**PUBLIC COPY**

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

115

[Redacted]

FILE: [Redacted] Office: NEWARK, NJ Date: JUL 02 2010

IN RE: Applicant: [Redacted]

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

ON BEHALF OF APPLICANT:  
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,  
  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Newark, New Jersey and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States citizen and 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 her spouse and their United States citizen child.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated January 22, 2008.

On appeal, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in finding that the applicant had failed to establish extreme hardship to her qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B, Notice of Appeal or Motion; Attorney's brief.*

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, W-2 forms for the applicant's spouse; tax statements for the applicant's spouse; a CPA letter for the applicant's spouse; statements from the applicant; a statement from the applicant's spouse; a psychological evaluation; and country conditions reports. The entire record was reviewed and considered in rendering this decision.

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

- (i) 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 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 alien 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 on May 2, 2000 the applicant procured admission into the United States by presenting false documents at the airport in New York, New York. *Statement from the applicant*, dated August 29, 2007; *False visa, passport and Form I-94*. Based on her presentation of a fraudulent document at the port of entry, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality 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. The plain language of the statute indicates that hardship that the applicant or child would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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 pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Russia or the United States, as he is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in the adjudication of this case.

If the applicant's spouse joins the applicant in Russia, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native of Turkey. *Naturalization certificate*. He does not speak any Russian. *Statement from the applicant's spouse*, dated August 29, 2007. His parents live in Turkey. *Form G-325A, Biographic Information sheet for the applicant's spouse*. The applicant's spouse has lived in the United States since 1989. *Id.* The applicant's spouse asserts that it is unlikely that he would be able to obtain employment in Russia, as he is middle-aged and has no professional education. *Id.* While the AAO acknowledges this assertion, it notes the record does not include documentation, such as country conditions publications, regarding the availability of employment in Russia. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Nevertheless, the AAO acknowledges the added difficulties in obtaining employment in Russia for the applicant's spouse, as he does not speak the language.

When looking at the aforementioned factors, particularly the lack of familial and cultural ties to Russia; the applicant's spouse's inability to speak the language and its effect upon his adjustment to Russia; the loss of his pizzeria, safety issues in North Ossetia and dealing with the applicant's Post-Traumatic Stress Disorder (PTSD), all of which are discussed below; and raising a child in an unsafe area, the AAO finds that he would experience extreme hardship if he returned to Russia with the applicant.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native of Russia. *Naturalization certificate*. His parents live in Turkey. *Form G-325A, Biographic Information sheet for the applicant's spouse*. The applicant's spouse has lived in the United States since 1989. *Id.* The applicant's spouse notes that he would be affected on a financial level, as he would have to send money to the applicant in Russia. *Statement from the applicant's spouse*, dated August 29, 2007. While the AAO acknowledges this statement and notes that the record includes W-2 forms for the applicant's spouse showing he earned \$18,000.00 in 2006 (*See W-2 forms*), it notes that the record fails to include documentation, such as mortgage/bill statements, utility bills, or credit card statements, regarding the expenses of the applicant's spouse. Furthermore, there is nothing in the record to show that the applicant would be unable to contribute to her family's financial well-being from a location other than the United States. Counsel for the applicant asserts that it would be impossible for the applicant's spouse to raise his child in the United States without the applicant, as he owns his own pizza business to which he devotes many hours and there is no immediate family who could assist with the child care responsibilities. *Attorney's brief; See also Form G-325A, Biographic Information sheet, for the applicant's spouse showing his parents residing in Turkey*. While the record does not document the costs of child care along with the annual earnings of the applicant's spouse, the AAO acknowledges the added difficulties of caring for a child as a single parent when there are no additional family members to assist with such responsibilities.

The applicant was born in [REDACTED], Russia. *Form G-325A, Biographic Information sheet, for the applicant*. This region is known as Northern Ossetia and has encountered serious conflict and human rights problems due primarily to the spread of the Chechnyan conflict. *Attorney's brief; Country conditions reports*. The applicant currently has flashbacks of wartime in her town as a child. *Statement from [REDACTED]*, dated October 22, 2007. She has witnessed human rights violations and recalls hiding in her home for three days. *Id.* A psychological evaluation included in the record notes that the applicant suffers from PTSD which includes depression, anxiety, and nightmares from her past. *Id.* Her therapist notes that although she is not free of symptoms, the safety of her spouse's love is calming for her. *Id.* If the applicant were back in Russia, she would be back in the environment that caused her PTSD and anxiety would most definitely result. *Id.* While hardship to the applicant or child will not be directly considered, it will be considered to the extent it affects the applicant's spouse. The applicant's spouse cannot even imagine life without the applicant and the actual event would be devastating to him and the family. *Id.* Furthermore, if the applicant's spouse was depressed as a result of losing the applicant, his caretaking of their child would plummet. *Id.* When looking at the aforementioned factors, particularly the documented emotional difficulties of being separated from the applicant who suffers from psychological conditions that would be heightened in Russia, as well as the lack of family

support in the United States and the effect this would have in caring for his child, the AAO finds the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's misrepresentation for which she now seeks a waiver and her unlawful presence in the United States. The favorable and mitigating factors are her naturalized U.S. citizen spouse and U.S. citizen child, the extreme hardship to her spouse if she were to be refused admission, and her supportive relationship with her spouse as documented in the record.

The AAO finds that, although the immigration violations committed by the applicant were serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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 met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.