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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

H5

[redacted]

FILE: [redacted] Office: MOSCOW, RUSSIA Date: NOV 18 2010

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:

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently $585, but will increase to $630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the $630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Tariq Syed
for
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field District Director, Moscow, Russia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Russia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure a visa to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is the spouse of a United States citizen and the mother of a Russian citizen child. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 her husband and son.

The Field District Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field District Director*, dated September 24, 2008.

The record includes, but is not limited to, counsel's statements, a statement from the applicant's husband, psychological evaluations and reports for the applicant's husband and son, medical documents for the applicant and her son, divorce documents for the applicant's marriages, travel documents for the applicant's husband, tax documents, and credit card statements. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

> (i) In general.-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.
>
> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

> (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [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 [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...

In the present case, the record indicates that in 2003, the applicant submitted a false marriage certificate in connection with a diversity visa application.

In a letter dated October 10, 2008, counsel asserts that "[t]he claims against the [applicant] herein are not substantiated by the facts," and "[t]here is a confused fact pattern and...an open issue as to whether or not there even was a material misrepresentation." He states that the applicant "admits signing papers prepared by an agency;" however, "she cannot 'fully admit' presenting fraudulent documents as she had no intent to present any fraudulent documents nor intent to commit a material or otherwise misrepresentation." The AAO notes that the record indicates that when the applicant applied for a diversity visa in 2003, she claimed to be married to [redacted]. When the applicant appeared before a consular officer in 2004 to apply for another visa, she was married to a different man and she was requested to provide her divorce decree from [redacted]. However, she claimed she was never married to [redacted]. The consular officer then obtained a copy of her visa application, which had the applicant's signature on it, listed [redacted] as her husband, and included a copy of a marriage certificate to [redacted].

The AAO finds counsel's contention that the applicant may not be inadmissible to the United States through the misrepresentation of a material fact to be unpersuasive. Counsel claims that the applicant admits to signing documents but "if anything, [she] was the victim of travel agent's deeds or misdeeds." The AAO observes that in waiver proceedings the burden of proof is on the applicant to establish admissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant in this matter has submitted no documentary evidence establishing that she did not sign the diversity visa application or that she did not submit a false marriage certificate in support of the diversity visa application. In that the applicant has submitted no documentary evidence to establish that she did not sign the visa application or submit a false marriage certificate, the AAO finds the record to support a determination that the applicant was the individual who signed the visa application and submitted a false marriage certificate in support of that application. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in 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)). Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting a material fact in order to obtain a visa under the Act.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her son can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and the USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the

United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though

we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The first prong of the analysis addresses hardship to the applicant's spouse if he relocates to Russia. Counsel states the applicant's husband has established a life in the United States. In a letter dated September 2, 2010, [redacted] diagnosed the applicant's husband with major depressive disorder; however, [redacted] indicates that the "predominant stressor for [the applicant's husband] remains the prolonged separation from [the applicant] and [his] 6 years old son" and he does not address how the applicant's husband would be affected if he moved back to Russia with his family. In a psychological evaluation dated June 22, 2008, [redacted] states the applicant's husband suffers from hypertension, herpes simplex, chronic headaches, fatigue and episodes of syncope. However, there is no supporting documentary evidence reflecting the existence and severity of these claimed medical issues.

The AAO notes that the applicant's husband runs his own business in the United States; however, the record does not include documentary evidence that demonstrates that he would be unable to obtain employment if he relocated to Russia. Additionally, the AAO notes that no evidence has been submitted to establish that the applicant's husband would experience emotional or financial hardship in Russia. The AAO notes that the applicant's husband is a native of Ukraine and was a citizen of Russia, and no evidence has been submitted establishing that he does not speak Russian or that he has no family ties to Russia. There is no supporting medical documentation for the applicant's husband's claimed medical issues. The AAO notes that the record fails to demonstrate that the applicant's husband's claimed medical conditions would affect his ability to relocate or that he would experience any other form of hardship in Russia. The record does not establish that conditions in Russia would pose a risk to the safety of the applicant's husband. In that the record does not include sufficient documentation of financial, medical, emotional or other types of hardship that the applicant's husband would experience if he joined the applicant in Russia, the AAO does not find the applicant to have established that her husband would suffer extreme hardship upon relocation.

Regarding the hardship the applicant's husband would suffer if he were to remain in the United States without the applicant, counsel claims that the economic situation of the applicant's husband must be reviewed. Counsel states the applicant's husband is "facing a life as a single parent." In an undated letter, the applicant's husband states "this ordeal...is causing undue hardship on [his] personal and professional life." He states the situation has affected "[his] life and [his] business in the most detrimental way" and his business is suffering. In the psychological evaluation, [redacted] states the visits to Russia have created "great financial hardship for [the applicant's husband]." The AAO notes the applicant's husband's financial concerns.

The applicant's husband states he is experiencing anxiety and turmoil, which is affecting "[his] relationship with loved ones both inside and outside [his] family, robbed untold hours from [his] workweek and is affecting [his] entire life." In a letter dated September 15, 2010, counsel states there are "now severe psychological complications due to the separation of this family" and "[t]he separation is

beyond tolerable at this point." In the psychological evaluation, [redacted] states the applicant's husband has "passive suicidal ideation." [redacted] diagnosed the applicant's husband with major depressive disorder, severe, recurrent, with psychotic features. He states the applicant's husband's "mood [is] further depressed, and his general emotional condition to be significantly decompensated," based on the "prolonged separation from [the applicant] and 6 year old son, as well as the associated financial, time, and travel burdens associated with the separation." [redacted] states the applicant's husband reports "increased drinking, disorganization and forgetfulness, continued excessive worry about [the applicant] and [his] son, profound and persistent sadness, and paranoid ideation."

In a letter dated March 2, 2009, the applicant's son's school psychologist and director state the applicant's son's "education, development and formation of the psyche and personality" has been affected by the separation from his father, and he "is experiencing emotional stress of separation." They claim that the applicant's son has had difficulty adapting to kindergarten and "the manifestation of [his] deviant behavior especially amplified after his father left to the United States." In a letter dated May 18, 2009, the applicant's son's teachers and school psychologist state the applicant's son is experiencing a "neurosis-type state and strong emotional stresses" as a "result of frequent separations with the father." Additionally, they state that a "[s]eparation from his mother will cause serious psychological harm to [the applicant's son] and will impose negative consequences on his mental development in the future." Further, they claim that "any additional emotional and nervous stress should definitely be avoided" as "children are very hard to adjust to a change of residence, climate, language environment, circle of communication, [and] long travels," and "a complete family reunion...is very important for [the applicant's son's] mental and physical health." In a letter dated May 13, 2009, [redacted] states the applicant's son "is emotional, excitable, [and] exposed to stress of parting with his father." [redacted] recommends that there be increased attention and monitoring of the applicant's son, that no separation from the applicant occur as it will result in a breakdown in her son, and she encourages the applicant's son to reside with both of his parents, along with other recommendations. The AAO notes the applicant's son is suffering hardship through his separation from his father.

In a letter dated February 27, 2009, [redacted] diagnosed the applicant with a disorder of her menstrual cycle, ectropion of cervix, and hyperkeratosis of cervix, and recommended rest, medication, and laser rehabilitation of her cervix. In a letter dated February 26, 2009, [redacted] diagnosed the applicant with facial myokymia and asthenoneurotic syndrome, and recommended medications and blood analysis. The AAO notes the applicant's medical conditions.

The AAO notes that the applicant's husband may be experiencing some financial hardship because of the separation from the applicant; however, the applicant's husband has not provided sufficient documentation to establish his financial situation. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici, supra.* However, based on its review of the evidence in record, the AAO finds that when adding the applicant's husband's severe psychological issues to the normal hardships that would be associated with separation from a spouse and child, the applicant has established that her husband would experience extreme hardship if her waiver request were to be denied and he remained in the United States.

However, in that the record does not also establish that the applicant's husband would suffer extreme hardship if he relocated to Russia, the applicant has failed to establish extreme hardship to her husband under section 212(i) 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 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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.