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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



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DATE:

OCT 05 2011

Office: MOSCOW

FILE:

IN RE: Applicant:

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:

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, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Maria Feh*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Moscow, Russia. 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 citizen of Ukraine 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 failing to disclose the death of her then U.S. citizen fiancée, [REDACTED], when procuring a K-1 fiancée visa in December 2006, and subsequent entry to the United States in January 2007. 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 U.S. citizen spouse, [REDACTED].

The field office director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated February 24, 2010.

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

- (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:

- (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 field office director found that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having failed to disclose the death of her then U.S. citizen fiancée when she was issued a K-1 visa in December 2006 and upon entry to the United States in January 2007. On appeal, the applicant asserts that although it is her fault that she failed to disclose her then fiancé's death, she contends that she did not know that she could not utilize the K-1 Visa to enter the United States on a temporary basis to visit his family and his grave. As the applicant details,

In October 2005, [REDACTED] health started to deteriorate and he was diagnosed with stomach cancer. On October 11, 2005 he underwent a surgery and his stomach was removed. After a prolonged process of chemotherapy, [REDACTED] showed signs of remission and his health started to improve.... During the whole year of 2006 he was simply fighting for his life, and I could not wait for the K-1 visa to be approved, to join him, and to support him in person.... On December 21, 2006, I went to the US Embassy in [REDACTED] again to be interviewed for a K-1 visa. [REDACTED] was alive and was waiting for me to come to the US to be with him. I passed the Embassy interview and returned home to [REDACTED] to wait for the Embassy's decision on the visa. The people at the US Embassy told me that I would receive my passport with a decision in the mail from them.

On December 27, 2006, or almost a week after my US Embassy interview, my fiancé [REDACTED] died. I was very upset and distraught...

I received my mail my passport with a K-1 visa on January 4, 2007. The visa was issued on December 29, 2006. Please note that I did not go to the US Embassy in [REDACTED] in person to pick up the visa. I received it by mail. Therefore, I never spoke again with anybody at the US Embassy about the visa or [REDACTED] death. The US Officer who denied my I-601 application says that I did not inform the Embassy of [REDACTED] death. The truth is that I simply did not know that I had to do that. I did not know the proper procedure. I was too much in shock....

When [REDACTED] died, I got phone call from his parents, who were in shock, and who simply asked me to come to visit them in the US to console and support, and to visit [REDACTED] grave. They told me that [REDACTED] loved very much and his only death wish was to see me. I just did what I felt I had to do.... I didn't even realized (sic) the legal consequences and seriousness of the situation with the visa. I had no idea that I had to inform the Embassy of [REDACTED] death. All I wanted to do was go see the resting place of the man I loved. I wanted to be near him, even if in death.

So I came to the US on January 8, 2007 to visit the resting place of my fiancé, and to support morally [REDACTED] parents in that moment of grief. I stayed with [REDACTED] parents for a period of 30 days and returned to the Ukraine....

I never meant to mislead the authorities of this country. I ask for understanding and forgiveness....

I thought that having the K-1 visa allowed me to enter the US under these tragic circumstances.... I...did not overstay my K-1 visa and simply returned to Ukraine after 30-day visit....

Letter from [REDACTED] dated March 18, 2010.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C-*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

As noted in section 101(a)(15)(K) of the Act, the K-1 Visa is utilized by:

an alien who (i) is the fiancee or fiance of a citizen of the United States....and who seeks to enter the United States solely to conclude a valid marriage with the petitioner within ninety days after admission.....

The Department of State further provides:

The fiancé(e) K-1 nonimmigrant visa is for the foreign-citizen fiancé(e) of a United States (U.S.) citizen. The K-1 visa permits the foreign-citizen fiancé(e) to travel to the United States and marry his or her U.S. citizen sponsor within 90 days of arrival. The foreign-citizen will then apply for adjustment of status to a permanent resident (LPR) with the Department of Homeland Security's (DHS) U.S. Citizenship and Immigration Services (USCIS).

*Nonimmigrant Visa for a Fiance(e)(K-1), travel.state.gov*

The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19

I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). In this case, it has not been established, by a preponderance of the evidence, that the applicant did not materially misrepresent herself when she procured entry to the United States with the K-1 Visa. Had she admitted at the port of entry that her then fiancée had recently died and her intent was to enter the United States to visit his grave and his family, she would not have been permitted entry to the United States as a K-1 based on a determination that she was not eligible for said visa. Moreover, the applicant's failure to disclose her then fiancé's death shut off a line of inquiry which was relevant to her eligibility to enter the United States and which would have resulted in a proper determination that she be excluded. As such, based on the evidence in the record, the AAO concurs with the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of 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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., *Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant’s U.S. citizen spouse contends that he will suffer emotional and financial hardship were he to remain in the United States while his spouse resides abroad due to her inadmissibility. In a declaration, the applicant’s spouse explains that the applicant is his soul mate and long-term separation from her has caused him to experience a tremendous amount of stress, insomnia, despair and outright depression. He asserts that he is unable to concentrate on his daily life and he is at risk of losing his job due to his depression. The applicant’s spouse further contends that he wants to have a child but long-term separation is making it difficult for them to conceive. Finally, the applicant’s spouse explains that traveling is expensive and time-consuming and he will be ruined financially if he is forced to keep traveling abroad to visit the applicant. *Letter from* [REDACTED] [REDACTED] dated March 17, 2010.

To begin, the record contains no supporting evidence concerning the emotional and physical hardships the applicant’s spouse states he is experiencing due to continued separation from his wife. Moreover, with respect to the financial hardship referenced, while the applicant’s spouse has outlined the costs associated with past trips abroad to visit his wife, the AAO notes that the applicant’s spouse makes over \$82,000 per year. No financial or employment documentation has been provided on appeal to establish that the applicant’s spouse is unable to take time off of work and/or afford to continue traveling abroad to visit his spouse. Going on record without supporting

documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). The AAO notes that the applicant's spouse married the applicant while she was residing in the Ukraine and was thus aware of her inadmissibility and their need to live apart after marriage.

With respect to relocating abroad, the applicant's spouse asserts that he has no legal status in Ukraine, nor does he have a permit to work there. Thus, he contends that he would not be able to continue paying off the mortgage on an apartment in Florida where his parents live, leading to foreclosure, and such a predicament would cause him hardship. *Supra* at 3. In addition, the applicant's spouse contends that he is not fluent in the Ukrainian language, and his area of expertise, equities trading, is underdeveloped, thus causing him financial and career hardship. Moreover, the applicant's spouse explains that he has extensive ties to the United States as he came to the United States more than 20 years ago, and consequently, long-term separation from his elderly parents, his employment, his social and cultural life and his community would cause him emotional hardship. Finally, the applicant's asserts that he is Jewish and due to anti-Semitism in Ukraine, he will be in danger were he to relocate abroad. *Statement from* [REDACTED] dated December 14, 2009.

No supporting documentation has been provided establishing the emotional hardships the applicant's spouse asserts he would experience were he to relocate to Ukraine, his native country. With respect to the financial hardship referenced by the applicant's spouse in regards to relocating abroad, no supporting documentation has been provided establishing that the applicant's spouse would not be able to obtain gainful employment in Ukraine, his native country. Nor has any documentation been provided establishing that the applicant's parents are unable to afford the mortgage on their son's apartment, thereby alleviating the applicant's spouse's concerns with respect to a foreclosure. Alternatively, no documentation has been provided establishing that the applicant, gainfully employed as a dentist, would not be able to assist her husband financially while he resides in Ukraine. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship. Finally, in regards to the applicant's spouse's assertion that he will be in danger due to anti-Semitism in Ukraine, the record contains no evidence to support this assertion. Although the U.S. Department of State reports some incidents of vandalism and harassment based on religious affiliation in Ukraine, including acts of anti-Semitism, government laws and policies contributed to the generally free practice of religion and the government generally respected religious freedom in practice. *International Religious Freedoms Report-Ukraine, U.S. Department of State*, dated November 17, 2010. There is no evidence on the record indicating that the applicant's spouse would be in any specific danger in Ukraine based on his religion.

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 U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although

the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship they would face rises to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely 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. The waiver application is denied.