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

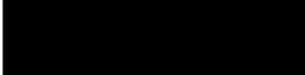


U.S. Citizenship  
and Immigration  
Services



H5

DATE: **OCT 14 2011** Office: MOSCOW, RUSSIA

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:

SELF-REPRESENTED

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 be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
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 a citizen of the Ukraine who provided false information to a U.S. consular officer in an attempt to obtain a visa to enter the United States. The applicant 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). She is the fiancé of a U.S. citizen.<sup>1</sup> The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen fiancé, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) March 31, 2011.

On appeal, the applicant's spouse asserts that he will suffer extreme hardship if the applicant is excluded from the United States. *Form I-290B*, received April 22, 2011.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

The record indicates that the applicant appeared for a non-immigrant visa interview in October 2009 and presented a letter claiming she had worked for a financial consulting company in an attempt to obtain a U.S. visa. Her employment could not be confirmed and when confronted with this information she admitted that she was not and had not worked for the company, and was instead a student studying finance and near the end of completing her degree. As such, the applicant misrepresented a material fact in seeking to procure admission to the United States.

The applicant's spouse asserts that the applicant should not have been found inadmissible under section 212(a)(6)(C)(i) of the Act because she actually did work for the financial consulting company.

When the applicant was initially interviewed she presented a letter stating she was an employee of [REDACTED], a financial consulting company. The contents of the letter, including the location, contact and phone number, could not be verified. When confronted with this information the applicant admitted that she had not worked for the company.

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<sup>1</sup> 22 C.F.R. § 41.81 and 8 C.F.R. 212.7(a)(1) specifically provides that K visa applicants shall file the same inadmissibility waiver as immigrant visa applicants. 8 C.F.R. § 212.7(a)(1)(66 Fed. Reg. 42587, Aug. 14, 2001).

Documentation in the record indicates that the applicant's fiancé is the owner of [REDACTED]. Subsequent to the applicant's visa interview the applicant's fiancé submitted a number of documents in an attempt to establish that the applicant had actually worked for the company. Once again the information in the documents, such as the address, phone number, listed contacts and authenticity of the documents, could not be verified.

On appeal, the applicant's fiancé submitted an undated, unsigned letter from a person named [REDACTED] asserting that the applicant's fiancé is not affiliated with the [REDACTED] branch of [REDACTED] and that her division would not know who worked for the branch of [REDACTED] located in [REDACTED] where the applicant allegedly worked. The record also contains several translated versions of documents purporting to be from various departments within Avalon and which list the applicant as having been employed at [REDACTED] in the [REDACTED]. The AAO notes that these appear to be copies of documents submitted in support of the applicant's non-immigrant visa application and, as noted above, that several attempts had been made to verify the information presented in these documents. As also noted above, the information in these documents regarding the applicant's employment with [REDACTED] could not be verified. In addition, as noted above, the applicant previously admitted that she did not work for [REDACTED]. In light of the fact that none of the documentation or information supplied by the applicant's fiancé could be verified the applicant's fiancé's assertions do not overcome the conclusion that the applicant did not work for the company and that the applicant – as well as the applicant's fiancé - misrepresented a material fact in attempting to obtain a U.S. visa based on her alleged employment at this company.

The AAO finds the applicant to be inadmissible pursuant to section 212(a)(6)(C)(i).

The record contains, but is not limited to, the following evidence: a brief from counsel for the applicant; several statements from the applicant's fiancé; an employment letter for the applicant; business registration records for [REDACTED]; background materials on depression; internet periodicals and country conditions materials on the Ukraine; statements from [REDACTED], dated April 14, 2011, March 3, 2011, February 27, 2011; statements from [REDACTED], dated December 9, 2010, December 20, 2010, and April 14, 2011; a translated medical record pertaining to the applicant's fiancé's status as a victim of Chernobyl; a translated medical record pertaining to the applicant's fiancé's father's surgery in 1991; a statement from the applicant's fiancé's mother; a statement from the applicant's fiancé's father; a statement from [REDACTED], dated December 22, 2010, stating that the applicant's fiancé has been self-employed owner of Avalon since March 20, 2006; statements from [REDACTED] CPA, undated, regarding the applicant's fiancé and his mother; copies of paystubs for the applicant's fiancé's mother; copies of mortgage and rent statements for the applicant's fiancé's mother and father; copies of energy bills for the applicant's fiancé's mother and father; copy of an automobile financing statement for the applicant's fiancé's mother; copy of a self-applied psychological test by the applicant's fiancé; copies of language test results for the applicant's fiancé; birth certificates for the applicant's daughters, bank statements, tax returns, school records and pay stubs for the applicant's husband.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's fiancé 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 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 fiancé asserts on appeal that he would experience financial and emotional hardship if he had to relocate to the Ukraine. *Statement of the Applicant’s Fiancé on Appeal*, dated January 1, 2011. With respect to financial hardship, the applicant’s fiancé states that he had a business in the Ukraine which failed, he does not speak sufficient Ukrainian or Russian to maintain a job, and salaries are lower in the Ukraine. He asserts that he would live in fear in the Ukraine because of anti-American and anti-semitic crime and that he was mugged while residing in the Ukraine. He also asserts that he would not be able to receive treatment for his depression in the Ukraine and that he has to travel back and forth to the United States to get his medicine.

With respect to financial hardship, although his business may no longer be operating in the Ukraine, this is insufficient to show that he would be unable to obtain employment in the Ukraine.

The record contains certificates indicating that the applicant’s fiancé took language examinations in Russian and Ukrainian and has submitted translated copies of the results of these examinations.

According to the results his knowledge of these languages is at an "initial stage." However, the applicant's fiancé claims in his appeal brief that his father does not speak English and that he often acts as a translator for him. The applicant's fiancé's parents are both from the Ukraine, the applicant's fiancé himself was born in the Ukraine, the applicant herself is from the Ukraine, the applicant's fiancé opened and ran a business in the Ukraine for several years and United States Citizenship and Immigration Services (USCIS) records shows that the applicant's fiancé has frequently travelled to the Ukraine, sometimes staying for periods of weeks and months. These facts are inconsistent with the assertions of the applicant's fiancé that he is not sufficiently fluent in Russian or Ukrainian to find employment or continue his education. Doubt cast on any aspect of the applicant's proof may undermine the reliability and sufficiency of the remaining evidence offered in support of a petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Evidence discussing salaries and other economic information may be sufficient to establish that salaries in the Ukraine are not as high as in the United States, but they do not demonstrate that the conditions are such that it would present an uncommon hardship factor for the applicant's fiancé as most countries will have a lower standard of living or lack the opportunities available in the United States. *See Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978)(recognizing that most countries will have a lower standard of living than the United States and that Congress did not intend to remedy this by suspending the deportation of aliens who would be unable to maintain their standard of living).

The applicant's fiancé has submitted country conditions materials and other background documentation on the social, criminal and economic environment in the Ukraine. The collection of articles submitted by the applicant's fiancé indicates that instances of crime exist in the Ukraine, and that some organizations note the presence of intolerant acts there. However, as noted by the State Department in the Travel Information for the Ukraine submitted by the applicant's fiancé, "[f]or the most part, Ukraine is a safe country to visit, with few anti-U.S. sentiments." The U.S. State Department also notes that most of the hate crimes which occurred in the country occurred in the downtown areas frequented by tourists, and that by and large the people targeted were of Asian, African or non-European descent.

The record includes country conditions material from sources including Wikipedia. The AAO notes that material submitted from websites such as Wikipedia cannot generally be used to establish factual assertions or carry an individual applicant's burden as the information cannot be confirmed as accurate or reliable and do not specifically relate to an applicant or their qualifying relative. In this case, the AAO notes that the applicant's fiancé, as discussed above, has spent significant periods of time in the Ukraine, is familiar with its customs, social practices and economic environment, and even operated a business in the country. There is no evidence submitted which corroborates the applicant's fiancé was a victim of any mugging, such as a police report or other testimony, and there is insufficient evidence to establish that he would reside in a high crime area or that he would be targeted due to his appearance as a U.S. citizen or ethnic minority. Based on these observations the AAO does not find the record to establish that conditions in the Ukraine are such that it would rise to the level of creating an uncommon hardship factor on the applicant's fiancé if he were to relocate

there to be with the applicant. *See also Matter of Uy*, 11 I&N Dec. 159 (BIA 1965)(concluding that readjustment after living abroad not characterized as extreme since most will endure this hardship).

The record fails to document that the applicant's fiancé would be unable to receive treatment for his depression in the Ukraine. Although the record contains a news article criticizing the Ukraine's efforts with regard to mental health, this does not establish that he would be unable to obtain any necessary medication or treatment.

Prior counsel for the applicant asserted that the applicant's fiancé cannot relocate to the Ukraine because his parents are both dependent on him financially and physically for support. *Brief in Support of Appeal*, received April 22, 2009. The applicant's fiancé asserts the same in his appeal statement. The record includes statements from a CPA, mortgage and rent statements, electricity and other bills, pay stubs and a doctor's statement pertaining to the applicant's fiancé's parents. At the outset the AAO notes that the applicant's fiancé resides at the same address as his mother and that the record indicates that his father resides in the same apartment building as well. Thus, while the applicant's fiancé may be paying a mortgage listed in his mother's name, this is mitigated by the fact that he resides with her and does not have any separate rent or mortgage payment for himself.

The AAO notes that the record reflects that the applicant's fiancé's mother earns approximately \$3,500 a month based on her pay stubs and a CPA statement. In addition, as discussed above, the applicant's fiancé has spent significant time in the Ukraine without creating hardship for his mother or disrupting any financial support he provides for her. The record also lacks any evidence of what the applicant's fiancé's actual earnings are, and whether or not he would be able to support his mother and father from abroad as he did during recent years while spending significant time in the Ukraine. Although the applicant's fiancé has submitted documentation asserting that wages are lower in the Ukraine, this did not appear to impact his ability to provide financially for his parents for the last several years as he travelled back and forth to the Ukraine for his employment with [REDACTED]

The AAO also notes that the record does not establish that the applicant's fiancé's parents would be unable to relocate to the Ukraine. The record does not contain complete information on the income of the applicant's fiancé's parents, such as tax returns or other potential sources of income. Even in a light most favorable to the applicant, if the record contained sufficient evidence to establish that the applicant's fiancé's parents would have to sell their home or move to more affordable residences, this would not be considered an uncommon hardship rising to such a degree that it created an indirect hardship factor on the applicant's fiancé.

With regard to the assertion that the applicant's fiancé's father is emotionally and physically dependent on him, the record contains a statement from [REDACTED], dated April 14, 2011, asserting that the applicant's father has prostate cancer, radiation proctitis and osteoarthritis, as well as depression and anxiety. The applicant's fiancé has asserted that he sometimes spends the night with his father to assist him physically and emotionally. As discussed above, the applicant's fiancé's father resides in the same building as the applicant's fiancé. The statement from [REDACTED] regarding the applicant's father does not specify to what extent the applicant's fiancé's father needs physical

assistance, does not explain to what degree his father is able to function for himself, or that the applicant's fiancé must be the one to provide any necessary assistance. The applicant's fiancé has spent a significant amount of time in the Ukraine. This is inconsistent with the assertion that the applicant's fiancé's father is physically dependent on the applicant's fiancé, or that he is incapable of caring for himself. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Although the evidence submitted suggests that the applicant's fiancé's parents may have some medical issues, and that the applicant's fiancé may provide some financial support for them, when viewed in light of the facts discussed above, the AAO cannot determine that they are physically and financially dependent on him to such a degree that it would create an indirect hardship factor on the applicant's fiancé if he were to relocate to the Ukraine to reside with the applicant.

Counsel for the applicant asserts that the applicant's fiancé would experience extreme emotional hardship if the applicant were not admitted to the United States. *Statement in Support of Appeal*, received April 22, 2011. The applicant's fiancé has also asserted that he suffers from Major Depression due to separation from his spouse, and has submitted numerous statements from Dr. Leon Stern and Dr. Bakis. The record also includes statements from friends and family members of the applicant's fiancé discussing his emotional hardship and the impact of separation from the applicant.

The record contains three letters from [REDACTED]. The first is handwritten on business paper with an official letter head and is dated February 27, 2011. It states that the applicant's fiancé is under [REDACTED] care for major depression. The second letter is typed on plain white paper and is dated March 3, 2011. It states that the applicant's fiancé is suffering from "severe Depression because of intense psychological distress," that he is taking medication, that he needs rest and is unable to travel. The third letter is also typed on plain white paper and is dated April 14, 2011. It states that the applicant's fiancé is suffering from "Major Depressive Disorder and extreme manic episodes, that leads to mental paralysis, patters [sic] of suicidal thoughts, and episodes of self mutilation." The AAO notes that the signatures on the two more recent letters are significantly different than the signature on the first letter. As noted the two more recent letters were also printed on plain white paper, whereas the first was handwritten on business paper with official letterhead. Further, the AAO notes that there is no documentary evidence in the record which corroborates the statements made in the letters purportedly signed by [REDACTED], such as prescription slips, pharmacy receipts or health insurance statements. Given the inconsistencies in these letters and the lack of independent, objective evidence supporting these letters, the AAO finds that these letters must be given diminished evidentiary weight. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The record also includes two letters from [REDACTED]. The first is dated December 9,

2010, and it states that the applicant's fiancé is under [REDACTED]' care for depression and anxiety. It further states that the applicant's fiancé has been started on medications and was recommended to a psychiatrist. The second letter is dated April 14, 2011, and states that the applicant's fiancé has been a patient for ten years, is in tremendous distress due to separation from the applicant, and "is not able to work and function due to his serious psychiatric problem." However, the AAO notes that the record contains a statement from [REDACTED] of [REDACTED], dated April 27, 2001, which states that the applicant's fiancé has been employed by [REDACTED] since January 2011. The letter does not indicate that the applicant's fiancé has been unable to work.

The record also contains an unsigned, undated statement bearing the name [REDACTED]. [REDACTED] claims that he was worried about the applicant's fiancé because he had not contacted him from his apartment in [REDACTED]. He asserts that when he went to the applicant's fiancé's apartment he found him drunk and unconscious, having attempted to commit suicide. The record contains a translated document from a hospital in the Ukraine indicating that he was brought in with symptoms of attempted suicide, treated and then referred to a psychiatric ward. Although the AAO notes these documents, given the numerous inconsistencies noted above, the AAO finds these documents insufficient to establish that the applicant's fiancé will experience extreme hardship as a result of separation.

The AAO recognizes that the applicant's fiancé has family and business ties in the United States which would be impacted if he relocated to the Ukraine. However, the AAO also notes that the record shows that the applicant's fiancé has made numerous trips to and spent significant time in the Ukraine. Thus, the level of physical and financial support the applicant's fiancé provides his parents is unclear. The AAO recognizes that the applicant's fiancé may experience some emotional hardship due to separation from the applicant if he were to remain in the United States, but the evidence submitted is not clearly accurate and the AAO cannot determine that he would experience extreme hardship based on this factor alone.

The AAO acknowledges that the applicant's fiancé will experience emotional hardship if he remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship articulated in this case, based on the evidence in this record, does not rise above the common result of removal or inadmissibility and thus does not constitute extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.