

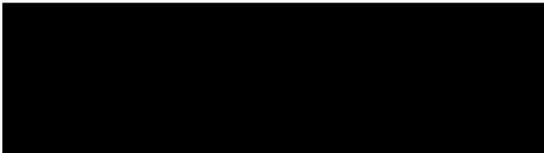
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090



**U.S. Citizenship
and Immigration
Services**



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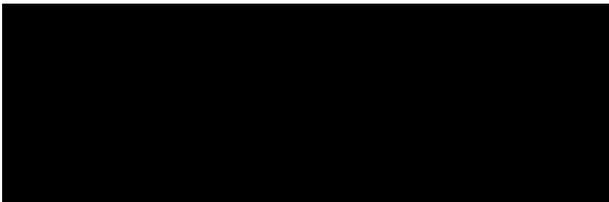
DATE: **FEB 24 2012** OFFICE: MILWAUKEE, WISCONSIN

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,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a native of the Union of Soviet Socialist Republics and 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 having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant through counsel does not contest this finding of inadmissibility. Rather, he 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 wife and children.

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. *See Field Office Director's Decision*, dated August 20, 2009.

On appeal, counsel asserts that the United States Citizenship and Immigration Services (USCIS) violated the law and arbitrarily and capriciously exercised its discretion by denying the applicant's waiver because the psychological report as well as the existing societal and countrywide problems in Ukraine evidence that the applicant's family unit would be clearly impacted. *See Notice of Appeal or Motion (Form I-290B)*, dated September 14, 2009. Counsel also asserts that USCIS is predisposed to deny virtually any section 212(i) waiver for extreme hardship because it compares the hardship that would impact the applicant's spouse to hardship that is typically experienced by families with inadmissible family members. *Id.*

The record includes, but is not limited to: a brief from counsel; a letter of support; identity documents; psychological evaluation; financial documents including bills; employment documents; court dispositions; and country conditions information. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(C) Misrepresentation.-

(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).

The Field Office Director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for having presented a nonimmigrant U.S. visa that was obtained through improper means when seeking admission to the United States on February 14, 2002. The record supports this finding, and the AAO concurs that this misrepresentation was material. The applicant through counsel has not disputed his inadmissibility on appeal. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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

- (1) The [Secretary] may, in the discretion of the [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 [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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. 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).

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 record contains references to hardship the applicant’s biological and step-daughters would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien’s children as a factor to be considered in assessing extreme hardship. In the present case, the applicant’s spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant’s children will not be separately considered, except as it may affect the applicant’s spouse.

Counsel contends that the applicant’s spouse will experience extreme psychological and emotional hardship as a result of separation from the applicant because as the mother of two children who has been diagnosed with Post Traumatic Stress Disorder, she is at risk of suffering from

decompensation, panic attacks, and suicidal ideations. *See I-290B Brief in Support of Appeal*, dated January 30, 2012. Counsel also contends that the applicant's children would suffer considerably if they were separated from the applicant, which would have an effect on the spouse. *Id.* In support of his contentions, counsel submitted a statement from the spouse in which she discusses her relationship and feelings for the applicant and how he has been an important part of hers and their children's lives; her unhappy and abusive previous marriages; her immigration status in the United States; and the reasons why she sought psychological counseling. *See Letter of Support from [REDACTED]* notarized April 27, 2009. Counsel also submitted a report from the spouse's mental health professional in which she discusses the spouse's physical appearance and demeanor; biographical information; work history; medical history; current mental health symptoms and diagnosis; the relationship with the applicant; her prior marital relationships; various psychological researches; and the applicant's immigration process in the United States and the effect that separation would have on the spouse and her children. *See Psychological Report from [REDACTED]* dated April 11, 2009.

The AAO notes that the applicant's spouse has expressed indicators of clinical depression and has been diagnosed with Post Traumatic Stress Disorder and may experience some emotional hardship because of separation from the applicant. The AAO also notes that the spouse's psychological evaluation indicates that it is likely that the spouse's panic attacks will return if the waiver is not granted and that she "may become suicidally depressed" without her primary support system, of which the applicant is a part. *Id.* However, the conclusions in the applicant's psychological evaluation are speculative. Moreover, the psychological health evaluator relies on research, without demonstrating how it relates specifically to the spouse, to conclude that she is likely to experience panic attacks and possibly become suicidally depressed. Given the speculative nature of the conclusions, the AAO cannot conclude that the record establishes that the spouse's emotional hardship would go beyond the norm.

Additionally, counsel contends that the applicant's spouse will experience extreme financial hardship as a result of separation from the applicant because employment conditions in Ukraine are not promising. The AAO notes that the applicant's vocation is in the construction industry, and that general country conditions information indicate that wage arrears have affected construction enterprises in Ukraine. The AAO also notes that the applicant's spouse has been employed by Airgas Safety in the full-time position of Account Manager with an annual salary of over \$22,000. *See Employment Letter Issued by [REDACTED] Human Resources Manager*, dated April 22, 2008. There is no specific evidence in the record that the spouse would be unable to meet her financial obligations in the applicant's absence or the applicant's inability to find employment in Ukraine and contribute to his and the spouse's households.

The AAO recognizes that the applicant's spouse may experience some hardships as a result of separation from the applicant. However, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of separation from the applicant.

Counsel further contends that the applicant's spouse and children will experience extreme hardship if they were to relocate to Ukraine to be with the applicant because the spouse does not have any relatives there; her employment opportunities there are not promising; she shares custody of her one child with an ex-husband who would not agree to the child's relocation; the applicant's parents are retired and do not have the financial capability to provide for the applicant and his family; and there are societal problems in the Ukraine including violence against women and children, discrimination against women, sexual harassment in the workplace, employment discrimination, and inadequate government funding for education, healthcare, and services for children. *See I-290B Brief in Support of Appeal, supra; see also Form I-290B, supra.*

The record is sufficient to establish that the applicant's spouse would suffer hardship if she were to relocate to Ukraine because she is neither a native nor a citizen of Ukraine; does not have any family, social, or financial ties there; and shares joint legal custody of her daughter with an ex-husband in the United States. Further, although the country conditions information fails to show how the spouse would be directly impacted by employment or economic conditions in Ukraine, the record reflects that the cumulative effect of the lack of personal ties to Ukraine; strong family ties in the United States; and the social conditions that the applicant's spouse would experience upon relocating there, rises to the level of extreme. The AAO thus concludes that the applicant's spouse would suffer extreme hardship if she were to relocate to Ukraine due to the applicants' inadmissibility.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she relocated to be with the applicant, the AAO can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation and the scenario of relocation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios; as a claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*; *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, the AAO cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his United States Citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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. 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.