



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: **JUN 19 2013**

Office: NEW YORK [REDACTED]

IN RE : [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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you

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Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, New York, New York. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of the Soviet Union and citizen of Russia who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or misrepresentation. The applicant does not contest the inadmissibility finding but rather seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.

The record reflects that the applicant entered the United States in June 2000 as a non-immigrant J-1 Exchange Visitor. In November 2000 the applicant applied for asylum. That application was referred to Immigration Court where the applicant failed to appear for her scheduled hearing and was ordered removed in absentia from the United States, departing in November 2001 while under an order of removal. The applicant again entered the United States as an exchange visitor in June 2002 using a different name and failing to disclose that she had previously been ordered removed from the United States.

The District Director found that the applicant had established her qualifying relative spouse would experience extreme hardship if he were to relocate abroad to reside with the applicant, but failed to establish that her spouse would experience extreme hardship if he were to remain in the United States while the applicant resided abroad as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the District Director* dated July 24, 2012.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the Service erred by not finding the qualifying spouse would suffer extreme hardship if the applicant is unable to remain in the United States. With the appeal counsel submits a copy of the applicant's 2000 asylum application; a statement from the applicant's mother; financial documentation; and emails between the applicant's spouse and his daughter. The record also contains statements from the applicant and her spouse and letters of support from family and friends. The entire record was reviewed and considered in rendering a decision on the appeal.

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 that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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 spouse 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-Moralez*, 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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

Counsel asserts the applicant’s spouse would experience hardship without the applicant as he would need to raise their daughter on his own while financially supporting his two children from a prior marriage and running his own business. Counsel states the applicant has been residing in the United States continuously for more than 10 years and that her spouse cannot go to Russia because he was a refugee. He states that the applicant had applied for asylum and that she is the primary caregiver for their child.

The applicant contends that she had experienced religious persecution in Russia before entering the United States in 2000. She states that in the United States she began a relationship that became tense and threatening and that due to mental anguish during the relationship she forgot her Immigration Court hearing for her asylum application, learning from her attorney that a removal order had been entered against her. She states that feeling desperate she returned to her parents in Russia, where she experienced panic and anxiety, was hospitalized for psychological treatment, and had surgery for an abdominal cyst. She states that she saw the same problems that had caused her to leave Russia, so she changed to her mother’s maiden name, got a new birth certificate and passport, and eventually used an agency to obtain another J-1 visa. She states she then returned to the United States in June 2002, after which she met her current spouse.

The applicant’s spouse states that the applicant takes care of their daughter as he is busy running his café business. He states he wants to live his life with the applicant and does not know what he would do if she returns to Russia, where he has no future. He also states that he provides financial assistance to his parents, pays their health insurance, and provides for his two children with his first wife.

A 2012 psychological evaluation states that the spouse's entire family is now in the United States having left Russia due to persecution against Jews. The evaluation states that the applicant's spouse provides his parents financial and health care needs and that they take care of his daughter. It states that the applicant's spouse wishes to stay near his family and that his parents would be devastated if he relocates to Russia. The evaluation describes the applicant's spouse as having grown up with low self-esteem and that his first marriage was physically abusive. The evaluation notes that the applicant and her spouse have a strong bond based on common values and that they emotionally support each other. It states that the spouse depends on the applicant for his psychological needs and fears being unable to care for himself, his daughter, or his parents while maintaining the home and business, and that he fears the daughter would be crushed if the applicant were absent. It further states the applicant has been a co-manager with the spouse's business, which is the family's only source of income. A 2009 psychological evaluation states that the applicant's return to Russia would be psychologically destabilizing for the spouse.

As the District Director found extreme hardship to the applicant's spouse if he were to relocate to Russia to reside with the applicant, this criterion will not be re-addressed by the AAO.

The AAO finds that the record fails to establish that the applicant's qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. Counsel states it would be a hardship for the applicant's spouse to raise their daughter on his own, the applicant's spouse states that he does not know what he would do without the applicant, and a psychological evaluation states the applicant's spouse is emotionally dependent on her. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not establish that the qualifying spouse's emotional hardships are outside the ordinary consequences of removal. Further, the applicant's spouse and a psychological evaluation note that the spouse's parents provide care for the applicant's daughter and the applicant has not shown that they would be unable to continue doing so.

The record contains information about the spouse's taxes and some bills, and reflects that the applicant's spouse makes child support payments for his children from a prior marriage. The applicant's spouse and a psychological evaluation state that the spouse provides financial and health care needs for his parents. However, the applicant's spouse does not assert economic hardship due to separation from the applicant and the record does not establish his overall financial situation or show that without the applicant's physical presence in the United States her spouse would be unable to meet his other obligations. Further, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The record contains references to hardship the applicant's child 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 under section 212(i) of the Act. 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 child will not be separately considered, except as it may affect the applicant's spouse.

We 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. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise 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 her qualifying 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.