



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

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF D-Z-

DATE: MAR. 15, 2016

MOTION ON ADMINISTRATIVE APPEALS OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Russia, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Acting District Director, New York, New York, denied the application. We dismissed the subsequent appeal and the matter is now before us on a motion to reopen and reconsider. The motion to reopen and reconsider will be denied.

In a February 28, 2014, decision, the Director determined that the evidence in the record was insufficient to support a finding that the Applicant's qualifying relative would experience extreme hardship upon the denial of the waiver application. In our August 3, 2015, decision, we also determined that the Applicant had not established that a qualifying relative would experience extreme hardship upon denial of her Form I-601.

On motion, the Applicant asserts that her spouse is very close to his stepdaughter so that any hardship that would be experienced by her would result in hardship to him. The Applicant also contends that her spouse is still required to treat his medical ailments with diet and physical therapy, and she and her daughter would be unable to receive adequate healthcare in Russia. The Applicant further contends that she has been employed ever since receiving an employment authorization document.

A motion to reopen must state new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must: (1) state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy; and (2) establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). In support of the motion, the Applicant submitted an affidavit, family photographs, background information concerning healthcare in Russia, and an employment letter for the Applicant's spouse. The entire record was reviewed and considered in rendering this decision. We find that the requirements of a motion to reopen have been met, but the requirements of a motion to reconsider have not been met.

Section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), provides:

(b)(6)

*Matter of D-Z-*

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.

The record reflects that the Applicant filed a B-2 visitor visa application on September 7, 2012, in which she claimed to be married to [REDACTED]. However, in a Form G-325A, Biographic Information, filed with the Applicant's Form I-485 on April 22, 2013, Application to Register Permanent Residence or Adjust Status, the Applicant indicated that her marriage to her current spouse was her first and only marriage. During the Applicant's Form I-485 interview on September 23, 2013, she testified that all the information on her Form I-485 and supporting documents were true and correct. The record reflects that the Applicant misrepresented her marital status on her September 7, 2012, B-2 visitor visa application. Accordingly, the Applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting a material fact to procure a visa to the United States. The Applicant does not dispute this ground of inadmissibility on motion.

Section 212(i)(1) of the Act, 8 U.S.C. § 1182(i)(1), provides that section 212(a)(6)(C)(i) inadmissibility may be waived as a matter of discretion for

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 . . . that the refusal of admission . . . 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.

The Applicant must demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives. In this case, the qualifying relative is his U.S. citizen spouse. Hardship to the applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists "only in cases of great actual and prospective injury," *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984), but hardship "need not be unique to be extreme." *Matter of L-O-G-*, 21 I&N Dec. 413, 418 (BIA 1996). The common consequences of removal or refusal of admission, which include "economic detriment . . . [,] loss of current employment, the inability to maintain one's standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment," are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); *see also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (separation of family members and financial difficulties alone do not establish extreme hardship); *but see Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

In asserting hardship to her spouse, the Applicant asserts that she is currently employed and providing financial assistance to her family’s household. The Applicant asserts that she was previously a homemaker and only began employment upon receipt of her employment authorization document. Government records reflect that she was issued an employment authorization document on June 18, 2013. The record contains a letter dated August 28, 2015, stating that the Applicant is employed as a babysitter for 25 hours a week, at a rate of ten dollars per hour. The record does not mention when the Applicant started this employment. The record also contains 2013 and 2014 tax returns for the Applicant and her spouse. It is noted that the tax returns do not list an occupation for the Applicant and are not accompanied by a Form W-2, Wage and Tax Statement, for either the Applicant or his spouse. Accordingly, the tax returns indicate the total income, jointly, for the Applicant and his spouse, but do not serve as corroboration for the Applicant’s income. The record also does not include a monthly financial accounting for the Applicant’s household. It is noted that the Applicant and her spouse met in 2012 and were married in 2013. There is no indication that the Applicant’s spouse was unable to meet his financial obligations prior to his marriage to the Applicant or while she was a homemaker.

The Applicant’s spouse asserts that if his spouse and stepdaughter depart from the United States, he does not know what he would do, as it would be very hard to endure the loss of his spouse’s company and another child. He states that he is very close to his step-daughter; he is estranged from his two children due to action taken by his ex-spouse; and he helps her with homework, takes on her on walks, and takes her to movies and museums. The record reflects that the Applicant’s spouse has two children currently residing in Russia. The Applicant asserts that her spouse is very close with her stepdaughter, who would be unable to receive adequate medical treatment in Russia. The record contains medical documentation for the Applicant’s spouse’s stepdaughter stating that she was admitted to a hospital on October 14, 2013, with second degree burns and discharged on October 25, 2013. The physician’s letter, dated December 14, 2013, further stated that the Applicant’s spouse’s stepdaughter continued follow-up treatment in a pediatric office for slow healing wounds and returned to school on November 25, 2013. The record does not contain any updated medical documentation for the Applicant’s spouse’s stepdaughter or any other medical documentation indicating that she currently has any medical ailments necessitating treatment.

The Applicant’s spouse asserts that he will experience both emotional and medical hardship upon separation from the Applicant, as he requires her assistance with his diet. He also details his difficult marital history and the positive effect of the Applicant on his mood; and that he cannot eat or sleep and has difficulty concentrating. The record contains a psychological evaluation for the Applicant’s spouse based on a review of records and statements from the Applicant’s spouse. The evaluator diagnosed the Applicant’s spouse with major depressive disorder and states he has experienced

suicidal ideation in the past. The December 22, 2013, evaluation concludes that the Applicant's spouse requires cognitive behavioral therapy. However, the record does not contain any information concerning whether the Applicant's spouse is receiving cognitive behavioral therapy.

The Applicant's spouse asserts that he has pain in his neck, lower back, and knee from a car accident in 2011; the pain has increased due to his anxiety and depression; and the Applicant helps him when he is in pain. The record contains an August 24, 2015, letter from a physician stating that the Applicant's spouse has been treated for digestive issues, hypertension, cervical spine disc herniations, lumbar spine bulging discs, popliteal cyst, and increased signal in the posterior horn of the medical meniscus; and he has been prescribed physical therapy and osteopathic manipulative treatment to prevent stiffness, to improve blood circulation and to restore spine and joint mobility. The letter is not clear as to the frequency and cost of such treatment, and as to the severity of his conditions. The Applicant's spouse was prescribed a strict low-fat, dairy-free, and low-sodium diet. The psychological evaluation of the Applicant's spouse states that the Applicant prepares meals for her spouse and encourages him to make doctors' appointments. However, there is no indication that the Applicant's spouse would be unable to prepare meals and make doctors' appointments in the absence of the Applicant. Further, the psychological evaluation states that the Applicant's spouse's mother requires daily assistance with grocery shopping, meal preparation, and homemaking, provided by the Applicant as her spouse works many hours during the week. However, the record does not contain medical documentation for the Applicant's spouse's mother indicating that she physically requires this level of assistance. Further, as the Applicant is currently employed, the record is not clear as to whether she continues to provide these services. It is also noted that the evaluation states that the Applicant's spouse would be unable to manage his responsibilities if his stepdaughter were left alone in his care, but the Applicant's spouse's affidavit of August 26, 2014, indicates, upon the departure of the Applicant, his stepdaughter would accompany her mother to Russia.

It is acknowledged that separation from a spouse often creates hardship for both parties, and the evidence indicates that the Applicant's spouse would experience some emotional and physical hardship due to separation from the Applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the Applicant's spouse would suffer extreme hardship upon separation from the Applicant.

In regard to relocation to Russia, the Applicant's spouse states that he cares for his U.S. citizen mother who had her left knee replaced in 2010 and had heart surgery in 2012, and she would experience hardship without him. The Applicant's spouse asserts that he knows that he would not be able to receive the same medical treatment in Russia that he would in the United States. As noted, the record indicates that the Applicant's spouse has been prescribed a strict diet and physical therapy and manipulative treatment. Concerning the healthcare she and her daughter would receive in Russia, the Applicant asserts that it is more likely than not that they would receive inadequate care in Russia, as they are a household of modest means. The Applicant submitted background healthcare information for Russia indicating that there are low standards of compulsory state funded healthcare compared to Western standards. The background information also indicates that health care is free,

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*Matter of D-Z-*

but there is also the option to purchase private insurance for the best medical care available. The background article submitted by the Applicant indicates most doctors will ask for an extra payment for their services as they are often poorly paid.

The record reflects that the Applicant may experience difficulty in relocating to Russia. However, the record does not include supporting documentary evidence that his mother has medical issues. The record does not establish that the Applicant's spouse would be unable to receive physical therapy and manipulations under the governmentally provided healthcare system in Russia. As noted above, the record also does not contain any updated information concerning whether the Applicant's daughter requires any current medical treatments, and further, any medical treatments that would be unable to be secured upon relocation to Russia. The record reflects that the Applicant was employed as a representative in Russia for approximately three years prior to her entry into the United States. The Applicant's spouse's Form G-325 indicates that he has been employed as a home attendant since 2007. There is no indication that the Applicant and her spouse would be unable to obtain similar employment upon relocation to Russia to assist with any health care expenses. It was previously noted that the Applicant's spouse, like the Applicant, is a native of Russia. We find that there is insufficient evidence in the record, in the aggregate, to find that the Applicant's spouse would suffer extreme hardship upon relocation to Russia.

As the Applicant has not established extreme hardship to her spouse, no purpose would be served in determining whether she is eligible for a waiver as a matter of discretion. We note that the record includes information reflecting that the Applicant was arrested and charged with prostitution on [REDACTED] 2015; that she appears to be an employee of a large prostitution network based in New York; and she is operating a massage parlor in [REDACTED] Connecticut. These issues would need to be addressed in any future proceedings.

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we deny the motion.

**ORDER:** The motion to reopen is denied.

**FURTHER ORDER:** The motion to reconsider is denied.

Cite as *Matter of D-Z-*, ID# 15656 (AAO Mar. 15, 2016)