

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**PUBLIC COPY**

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



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



H6

FILE:



Office: MOSCOW, RUSIA

Date:

APR 06 2010

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

A handwritten signature in cursive script, appearing to read "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting Field Office Director, Moscow, Russia. The matter is now before the Administrative Appeals Office (AAO) on appeal.<sup>1</sup> The appeal will be dismissed.

The applicant is a native of the former Soviet Union and a citizen of Russia. She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of her last departure. She is married to a United States citizen. She seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The Acting 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 spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 12, 2007.

On appeal, the applicant states that she is a person of good moral character and asks that she be forgiven for residing unlawfully in the United States.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

---

<sup>1</sup> The AAO notes that the applicant indicates that she is appealing the Acting Field Office Director's denial of the Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal, as well as that of the Form I-601, Application for Waiver of Grounds of Inadmissibility. The applicant has, however, submitted only one fee on appeal. Accordingly, pursuant to Chapter 43.2(d) of the Adjudicator's Field Manual, the AAO will consider the applicant's Form I-601.

The record establishes that the applicant entered the United States on December 26, 1991 with a visitor's visa. Her visa expired on June 25, 1992. She filed an asylum application on December 27, 1993 and, on June 11, 1996, was placed into proceedings. On February 24, 1998, an immigration judge denied the applicant's asylum application and granted her voluntary departure, with an alternate order of removal. The applicant appealed the immigration judge's decision to the Board of Immigration Appeals (BIA). The BIA dismissed the appeal on August 9, 2001 and granted the applicant 30 days in which to voluntarily depart the United States, i.e., until on or about September 8, 2001. The applicant did not depart the United States, but was removed on December 8, 2003. Therefore, the applicant resided unlawfully in the United States from June 26, 1992, the day after her nonimmigrant visa expired, until December 27, 1993, the date she filed for asylum, which placed her in a period of authorized stay. She again accrued unlawful presence beginning on or about September 9, 2001, the day after her grant of voluntary departure expired, until her removal on December 8, 2003. Accordingly, the applicant accrued unlawful presence in excess of one year while she was in the United States.<sup>2</sup> As she is seeking admission within ten years of her last departure from the United States, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, i.e., the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant is not directly relevant in section 212(a)(9)(B)(v) proceedings and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health

---

<sup>2</sup> The AAO notes that the applicant filed a Form I-485, Application to Register Permanent Resident or Adjust Status, on September 7, 2001. While the filing of an affirmative adjustment application stops the accrual of unlawful presence under the Act, the applicant filed her Form I-485 defensively, i.e., after she had been placed in proceedings. Accordingly, she continued to accrue unlawful presence despite the filing of the Form I-485. See Memorandum from Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, *et al.*, "Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act," dated May 6, 2009.

conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she accompanies the applicant or remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record includes documents pertaining to the applicant's asylum application, the Form I-130 visa petitions filed by her spouse and her Form I-485 adjustment application. In support of her Form I-601 waiver application, the record contains, but is not limited to, statements from the applicant and her spouse.

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

The applicant states on appeal that she lived and worked in the United States for 13 years and volunteered with community organizations for three years helping sick people. She also states that she loves and misses her husband very much and cries every day, and that she is sorry for having overstayed her visa. The applicant's spouse asserts that his wife's removal has broken their hearts and that he is distraught due to her exclusion.

While the AAO acknowledges the sentiments of the applicant and her spouse, the applicant has failed to submit any documentary evidence to establish that her spouse would experience extreme hardship as a result of her inadmissibility. While the AAO acknowledges that the applicant's spouse has experienced hardship as a result of his separation from the applicant, there is no evidence of any medical condition, financial hardship or emotional hardship to the applicant's spouse that, in the aggregate, would distinguish his hardship from that normally associated with removal or exclusion. As such, the applicant has failed to establish that her spouse will experience extreme hardship if she is excluded and he remains in the United States.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. In the present case, the applicant has not addressed how her spouse would be affected if he were to join her in Russia. As such, the record does not demonstrate that the applicant's spouse would experience extreme hardship if he relocated to Russia with the applicant.

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 spouse would face extreme hardship if the applicant is

refused admission. 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. *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.