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



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

[REDACTED]

H6

DATE: **OCT 24 2011**

Office: MOSCOW FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

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 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, Moscow, Russia, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record establishes that the applicant, a native and citizen of Ukraine, entered the United States with a valid nonimmigrant H-4 visa in June 1995. The applicant's mother filed an asylum application on her and her daughter's behalf in 1998. The Immigration Judge denied the request for asylum in 1999 and granted the applicant voluntary departure with an alternate order of removal. An appeal of the Immigration Judge's decision was dismissed by the Board of Immigration Appeals (BIA) on September 18, 2002 and the applicant was ordered to voluntarily depart the United States within 30 days from the date of the order. *Order of the Board of Immigration Appeals*, dated September 18, 2002. The applicant failed to depart pursuant to the voluntary departure order and consequently, the voluntary departure order was converted to a removal order. On January 9, 2003, a Warrant of Removal/Deportation was issued. *See Warrant of Removal/Deportation*, dated January 9, 2003. The record indicates that the applicant departed the United States in October 2004. The applicant was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States from September 18, 2002 to October 2004, a period of more than one year. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and lawful permanent resident mother.

On appeal, counsel contends that the applicant was never notified by the Service of her asylum appeal denial in 2002. The AAO notes that in August 2004, the BIA denied the applicant's motion to reopen and found that the applicant had received proper notice of the 2002 BIA decision dismissing her appeal. *See Order of the Board of Immigration Appeals*, dated August 25, 2004. In denying the motion to reopen, the BIA noted that the 2002 order of the BIA was sent to [REDACTED] the attorney of record at the time, and the BIA found that, as Mr. [REDACTED] had properly filed Form EOIR-27, Notice of Entry of Appearance before the BIA, this constituted proper notice of the decision.<sup>1</sup> Counsel contends that the Immigration Judge in Detroit determined that proper notification was never given in the case, and therefore, granted the applicant's mother voluntary departure in her 2004 reopened removal hearing, but submitted no evidence to support this assertion. *See Brief in Support of Appeal*, dated May 6, 2009. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151

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<sup>1</sup> The AAO notes that the applicant had retained another attorney to represent her in a separate matter before U.S. Citizenship and Immigration Services (USCIS) in 2002, but there is no evidence on the record that her attorney submitted a Notice of Entry of Appearance before the BIA while her appeal was still pending before the BIA. [REDACTED] was therefore still the applicant's representative before the BIA at the time the decision was issued on September 18, 2002.

(BIA 1965). It has not been established that the applicant was not given proper notice of the Board of Immigration Appeal's decision, and the applicant therefore accrued unlawful presence from September 2002, when her asylum application was denied, until her departure from the United States in October 2004.

The field office director concluded that the applicant had 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. *Decision of the Field Office Director*, dated March 18, 2009.

In support of the appeal, the applicant submits a brief, dated May 6, 2009; a statement from her lawful permanent resident mother, dated April 19, 2009; a statement from her mother's husband, dated April 20, 2009; evidence of her departure from the United States in October 2004; and immigration bond information. The entire record was reviewed and considered in rendering this decision.

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

Aliens Unlawfully Present.-

(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 Attorney General (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...

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen

spouse and lawful permanent resident mother are the only qualifying relatives 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-I-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.

On appeal, the applicant's mother asserts that due to her daughter's inadmissibility, she has "lost [her] trust in justice" because it is "impossible for [her] to enjoy [her] American dream with all this agony, bitterness and desperation." She explains that she has developed high blood pressure and lower back pain, and since her husband works, she is alone to take care of her 80 year old mother-in-law, who suffers from Alzheimer's disease and requires constant care. *Letter from* [REDACTED] dated April 19, 2009.

To begin, the record contains no supporting evidence concerning the emotional hardship the applicant's mother states she will experience due to continued separation from her daughter. Nor has it been established that the applicant's mother would be unable to travel to Ukraine, her native country, on a regular basis to visit her daughter. As for the applicant's mother's referenced medical conditions, no documentation has been provided on appeal from the applicant's mother's treating physician detailing the medical conditions, the current gravity of the situation, the short and long-term treatment plan, and any hardships she would face were the applicant unable to reside in the United States. The AAO notes that the applicant's mother is married. It has not been established that the her mother's spouse is unable to assist the applicant's mother should the applicant continue to reside abroad due to her inadmissibility.

With respect to the applicant's spouse, in a declaration, the applicant's spouse explains that his wife is his best friend and he can not bear to live separately from her. He asserts that as a result of their separation, he has had to see a psychologist in an effort to cope with the depression and anxiety that he has developed in her absence. He further explains that in the past, they have been able to take advantage of work-related travel opportunities to reunite, but due to the economic downturn, it has been difficult for him to acquire enough time off to make long-distance trips to see his wife. Moreover, he asserts that he is unable to afford the expense of international travel for only a brief reunion. Finally, the applicant's spouse states that he is eager to start a family but he can't bear the thought of trying to begin a family while so far apart. *Letter from* [REDACTED] dated January 31, 2009.

A letter provided from [REDACTED] Psy.D., confirms that the applicant's spouse sought her assistance for individual psychotherapy, noting that they met in 2007 and two times in 2008. The letter does not detail the applicant's spouse's current mental health condition, the severity of the

situation, or the specific hardships he will face were the applicant unable to reside in the United States. Moreover, no financial or employment documentation has been provided to establish that the applicant's spouse is unable to take time off of work and/or afford to travel to Ukraine or any other country of their choosing to visit his spouse. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO further notes that the applicant's spouse married the applicant after she had departed the United States under an order of removal and he was thus aware of her inadmissibility and the possibility that they would need to live apart after marriage.

The AAO recognizes that the applicant's mother and husband will endure hardship as a result of continued separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

The applicant's mother has not detailed any reasons why she is unable to relocate abroad to reside with the applicant due to her inadmissibility. As for the applicant's spouse, he explains that he was born and raised in the United States and has no ties to Ukraine. He further contends that his mother suffers from work-related injuries that prevent her from traveling. Further, he states that he traveled to Ukraine three times and has sought out the various possibilities for the means of living together in [REDACTED] but due to his inability to speak the language, his lack of professional training, and the unfamiliarity with the country and culture, he would not be able to financially survive. Finally, he notes that he has been employed with the same company for more than seven years and were he to relocate abroad, he would experience career disruption. *Supra* at 1-2.

The record reflects that the applicant's U.S. citizen spouse would be forced to relocate to a country with which he is not familiar. He would not be able to communicate as he does not speak, read or write Russian or Ukrainian. He would have to leave his family, including his mother; his community; and his long-term gainful employment. The AAO thus concurs with the field office director that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

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 U.S. citizen spouse or lawful permanent resident mother will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse or daughter is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's and mother's situation, the record does not establish that the hardship they would face rises to the level of "extreme" as contemplated by statute and case law.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if he relocated abroad to reside with the applicant, we can find extreme hardship warranting

a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. 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 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.*; *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 in this case.

In proceedings for application for waiver of grounds of inadmissibility, 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. The waiver application is denied.