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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

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



*H6*

Date: **SEP 02 2011**

Office: MOSCOW, RUSSIA FILE: 

IN RE: Applicant: 

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

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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

*P*  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Moscow, Russia. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The applicant is a native and citizen of the Ukraine who 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 for more than one year and again seeking admission within ten years of her last departure from the United States. The applicant is the spouse of a United States citizen. She seeks a waiver of inadmissibility in order to reside in the United States.

In a decision dated June 30, 2009, the Field Office Director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated June 30, 2009.

On appeal, the applicant's attorney contends that the qualifying spouse is suffering emotional and financial hardships due to his separation from the applicant. Further, the applicant's attorney stated in a brief that the qualifying spouse immigrated to the United States when he was 15 years old and has lived in the United States for 13 (now 15) years. Further, the applicant's attorney asserts that the qualifying spouse's son lives in the United States and he has no family ties to the Ukraine.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601), the Notice of Appeal (Form I-290B), briefs from the applicant's attorney, a psychiatric evaluation, telephone records, flight reservations, photographs, proof of money sent to the applicant from the qualifying spouse, a birth certificate for the qualifying spouse's child, country condition materials, affidavits from the qualifying spouse and applicant, the qualifying spouse's business licenses, an affidavit from a psychologist, the qualifying spouse's naturalization certificate, financial documentation for the qualifying spouse, the applicant's birth certificate, a marriage license, a police clearance for the applicant in Florida, the applicant's college diploma and transcripts, reference letters, entry documents for the applicant's mother, lease documents, an approved Petition for Alien Relative (Form I-130) and other documentation submitted with the Application to Adjust Status (Form I-485).

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

(B) 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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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. The applicant's husband 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-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-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 applicant’s qualifying relative in this case is her husband, who is a United States citizen. The record indicates that the applicant entered the United States in 1999 with a K-2 visa and remained until May 19, 2009, when she voluntarily departed. The applicant accrued unlawful presence from December 28, 2002, when she turned 18 years old, until November 16, 2007, when her Form I-485 was received, a period in excess of one year. She began to accrue unlawful presence again on June 19, 2008, when her Form I-485 was denied, until May 19, 2009, when she voluntarily departed. In applying for an immigrant visa, the applicant is seeking admission within ten years of her departure from the United States. The applicant has not disputed her inadmissibility. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.

The record contains Form I-601, Form I-290B, briefs from the applicant’s attorney, a psychiatric evaluation, flight reservations, proof of money sent to the applicant from the qualifying spouse, a birth certificate for the qualifying spouse’s child, country condition materials, affidavits from the qualifying spouse and applicant, the qualifying spouse’s business licenses, an affidavit from a psychologist, financial documentation for the qualifying spouse, reference letters, lease documents, Form I-130 and other documentation submitted with Form I-485.

As previously stated, the applicant's attorney contends that the qualifying spouse is suffering emotional and financial hardships due to his separation from the applicant. Further, the applicant's attorney stated in a brief that the qualifying spouse immigrated to the United States when he was 15 years old and has lived in the United States for 13 (now 15) years. Further, the applicant's attorney asserts that the qualifying spouse's son lives in the United States and he has no family ties to the Ukraine.

The applicant's attorney asserts that the qualifying spouse is suffering emotional and financial hardships as a result of his separation from the applicant. The record contains affidavits from the qualifying relative, the applicant and a psychologist, as well as a psychological evaluation. The psychological evaluation states that the applicant does not have any emotional support in the United States because he is an only child and his mother returned to Russia, and that his only emotional support was the applicant. The evaluation diagnosed the qualifying spouse with Adjustment Disorder with Mixed Anxiety and Depressed mood and indicated that the qualifying spouse would "suffer irreparable harm, injury and emotional damage should his wife not be allowed to return to the United States." Further, the psychologist states that the qualifying spouse avoids his emotional issues by "escaping through alcohol and other numbing materials." In his affidavit, the qualifying spouse indicates that his life would be over if the applicant is not able to return to the United States.

With regard to the qualifying spouse's financial hardship, the applicant's attorney contends that the qualifying spouse is struggling to maintain two households, as well as providing for his son. Furthermore, the psychiatric evaluation indicates that the qualifying spouse is unable to visit the applicant often due to the cost of travel. The record contains proof that the qualifying spouse is sending money to the applicant, financial documentation regarding the qualifying spouse's business, tax returns, travel documents indicating the cost associated with flying to the Ukraine, a banking statement and lease agreements. The record demonstrates that the qualifying spouse would have difficulty visiting the qualifying spouse often in the Ukraine and would suffer from supporting two households, as well as his United States citizen son. As such, when considered in the aggregate, the documentation provided regarding the qualifying spouse's financial, emotional and psychological hardships demonstrate that he would suffer extreme hardship if he were to remain in the United States without the applicant.

The applicant has also demonstrated that her qualifying relative would suffer extreme hardship in the event that he relocated to Russia with the applicant. The qualifying spouse has been living in the United States since he was 15 years old and has lived here for 15 years. The applicant's attorney indicates that the qualifying spouse is Russian and that he does not speak Ukrainian. Further, the qualifying spouse contends that the Ukrainians discriminate against the Russians, and the record contains documentation regarding his potential issues with discrimination in the Ukraine. Further, the applicant's attorney indicates that the applicant has no family left in the Ukraine that can help her or the qualifying spouse should they relocate to the Ukraine. The record contains a letter from the applicant's mother and stepfather indicating that they live in the United States. Moreover, the qualifying spouse's son lives in the United States and the mother of his son lives in the United States. In his affidavit, the qualifying spouse asserts that his son would "not have the chance of having his father in his life" and that he would "no longer be able to [financially] support" his son if

he relocated to the Ukraine. The record contains the birth certificate of the qualifying spouse's son, a letter from the applicant's mother and affidavits from the qualifying spouse and applicant regarding the qualifying spouse's family ties to the United States and the Ukraine. Moreover, in the qualifying spouse's affidavit, he describes the time and effort he has put into his career and business, and indicates that he would be unable to start a new automotive business in the Ukraine because his licensures are not compatible there. The record contains documents regarding the qualifying spouse's business and its profits and assets. The AAO concludes that, were the applicant's spouse to relocate to the Ukraine with the applicant, he would suffer extreme hardship due to his length of residence in the United States, ties to the United States and lack of ties to the Ukraine, financial and career hardships and his difficulties assimilating into a country with another language.

Considered in the aggregate, the applicant has established that his wife would face extreme hardship if the applicant's waiver request is denied. Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on her behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives). . . .

*Id.* at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that she merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the

ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the hardships the applicant's United States citizen spouse and child would face if the applicant is not granted this waiver, the applicant's support from the qualifying spouse and friends and her apparent lack of a criminal record. The unfavorable factors in this matter are the applicant's accrual of unlawful presence in the United States.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.