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Date: **FEB 25 2013**

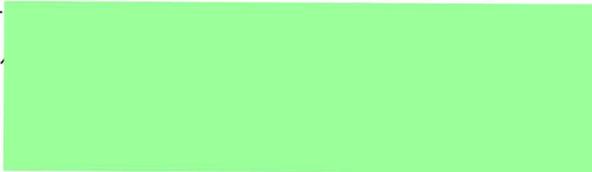
Office: MOSCOW

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:

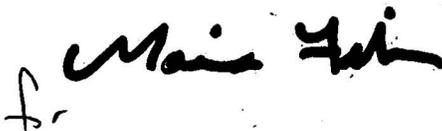


INSTRUCTIONS:

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.

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,



Ron Rosenberg  
Acting 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 is a native of Armenia and citizen of Russia who entered the United States with a nonimmigrant visa in March 1997 and remained beyond the period of authorized stay. The applicant's request for asylum and withholding of removal was denied in April 2005. In September 2006, the applicant's appeal was dismissed by the Board of Immigration Appeals (BIA). Subsequent motions were denied by the BIA in December 2006 and March 2007. The applicant did not depart the United States until February 20, 2009. The applicant was thus 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. The applicant does not contest this finding of inadmissibility. Rather, he seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and lawful permanent resident mother.

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 September 14, 2011.

In support of the appeal, counsel submits a brief. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B) 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. The applicant's U.S. citizen spouse and lawful permanent resident mother are the only qualifying relatives in this case. Hardship to the applicant or the applicant's spouse's child can be considered only insofar as it results in hardship to a qualifying relative. 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 U.S. citizen spouse contends that she will suffer hardship were she to remain in the United States while the applicant continues to reside abroad due to his inadmissibility. In a declaration, the applicant’s spouse explains that her teenage daughter from a previous marriage, born in 1996, started to have seizures in 2010 and as a result, the applicant’s spouse needs her husband to help care for her while she is running her two companies. In addition, the applicant’s spouse maintains that her husband is unable to find work in Moscow and she is maintaining two households and such a predicament is causing her financial hardship. She references that her home will go to foreclosure in June 2011, her utilities have been shut off, and she has college loans that are over \$69,000. *Letter from* [REDACTED] dated May 14, 2011.

To begin, although documentation has been provided establishing the applicant’s spouse’s daughter’s numerous absences from school due to seizures, it has not been established that the applicant’s physical absence from the United States is causing his wife hardship. No documentation has been provided establishing that the child’s father and/or siblings are unable to care for her when the applicant’s spouse is unable to do so. Nor has any documentation been provided with respect to the applicant’s spouse’s self-employment to establish that she is unable to make alternate work arrangements when she needs to care for her child. Finally, with respect to the financial hardship referenced, no documentation has been provided on appeal establishing the applicant’s financial contributions prior to his departure from the United States, to establish that the applicant’s absence specifically has caused his wife financial hardship. Nor has any documentation been provided by counsel establishing that the applicant is unable to obtain gainful employment while residing abroad, thereby ameliorating the financial hardships referenced by the applicant’s 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)).

As for the applicant's lawful permanent resident mother, counsel maintains that she requires significant medical care. The most recent medical documentation provided, from September 2011, establishes that the applicant's mother was involved in a motor vehicle accident in 2006 and remains incapacitated in many aspects of functioning. In addition, said documentation establishes that the applicant's mother has been diagnosed with depressive disorder. However, the documentation provided does not establish what specific hardships the applicant's mother is experiencing as a result of her son's residence abroad. The AAO notes that the applicant relocated abroad in 2009. It has thus not been established that the applicant's mother needs the applicant's support specifically for her daily care.

The AAO recognizes that the applicant's spouse and mother will endure hardship as a result of a long-term 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 AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen spouse and/or lawful permanent resident mother will experience extreme hardship were they to remain in the United States while the applicant continues to reside abroad due to his inadmissibility.

In regards to establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, counsel contends that both the applicant's spouse and mother would experience extreme hardship abroad. In regards to the applicant's spouse, counsel maintains that she is the residential parent of her children and is not capable of relocating abroad as she is required to keep her children in their existing county in Ohio. Additionally, counsel maintains that both the applicant's spouse's daughter and the applicant's mother require medical care that would not be readily available in Russia. *Brief in Support of Appeal*, dated October 12, 2011.

Evidence has been provided of the applicant's spouse's shared custody of her daughter with her ex-husband. *Agreed Judgment Entry and Decree of Divorce*, dated May 31, 2005. Evidence establishing the applicant's spouse's daughter's medical condition, specifically, seizures, and the need for continued medical care has also been submitted. In addition, the AAO notes that were the applicant's spouse to relocate abroad, she would be separated from her six children, her community and her two businesses. Moreover, medical documentation has been provided establishing the applicant's mother extensive medical needs and the unavailability of affordable and effective medical care in Russia. *See Letter from [REDACTED] M.D., Internal Medicine, [REDACTED]* dated September 29, 2011. The U.S. Department of State has confirmed that medical care in Russia is below Western standards. *See Country Specific Information-Russia, U.S. Department of State*, dated December 21, 2012. Based on a totality of the circumstances, it has been established that the applicant's wife and mother would experience extreme hardship were they to relocate abroad to reside with the applicant due to his inadmissibility.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative(s) 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 a qualifying relative(s) in this case.

The record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen spouse and/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 son is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's and/or mother's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's and mother's situation, the record does not establish that the hardships they would face rise to the level of "extreme" as contemplated by statute and case law.

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 application is denied.