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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:



OFFICE: MOSCOW

Date:

MAY 15 2009

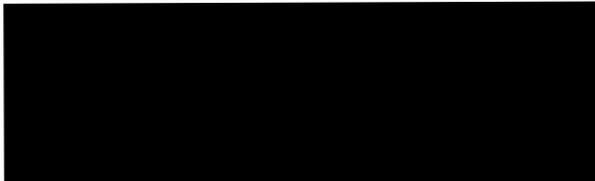
IN RE: Applicant:



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:



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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
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 reflects that the applicant, a citizen of Moldova, was admitted to the United States with a valid nonimmigrant temporary visitor visa in March 1995, with authorization to remain until April 22, 1995. He did not depart the United States until August 2005. He 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.¹ The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

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 Ground of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated January 8, 2008.

In support of the appeal, counsel for the applicant submitted a brief, dated January 24, 2008. 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:

(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.

....

(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

¹ The applicant does not contest the field office director's finding of inadmissibility.

admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien...

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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.

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 applicant's U.S. citizen spouse contends that she will suffer emotional hardship if the applicant is removed from the United States. In a declaration she states that she would suffer extreme emotional hardship due to the close and dependent relationship she has with the applicant. *Letter from* [REDACTED] dated May 4, 2007. In support of the emotional hardship referenced by the applicant's spouse, an evaluation has been provided by [REDACTED]. Dr. [REDACTED] confirms that he evaluated the applicant's spouse on April 30, 2007 and concluded that she is suffering from Major Depressive Disorder and Dysthymic Disorder, and recommended that she have a trial on antidepressant medications and participate in psychotherapy. *Psychological Evaluation of* [REDACTED], dated May 3, 2007.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering Dr. [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Finally, the AAO notes that although recommendations were provided by Dr. [REDACTED] for the applicant's spouse to follow to improve her mental health situation, including medication and psychotherapy, it has not been established that the applicant's spouse will suffer extreme hardship were she to follow said recommendations to improve her mental health.

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). The AAO thus concludes that the applicant has failed to establish that his U.S. citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. The applicant's spouse asserts that she would suffer extreme emotional hardship were she to relocate abroad because she has sole physical custody of her daughter from a previous marriage and that according to the divorce settlement, she is unable to reside outside of a 100-mile radius from her ex-husband due to his visitation rights. Thus, were she to reside abroad, she would not be able to continue in her role as primary caregiver to her child, who she has cared for primarily since she was five months old. *Supra* at 1. A copy of the Stipulation and Agreement between the applicant's spouse and her ex-husband has been provided to corroborate the applicant's spouse's assertions regarding the custodial arrangement with her ex-husband. Alternatively, were her daughter permitted to reside abroad, the applicant's spouse asserts that she would suffer financially, as Moldova has a substandard economy, she doesn't speak the native language of Moldova, and she would not be able to continue her profession as piano teacher due to the language impediment. *Id.* at 1.

Based on the problematic economic conditions in Moldova², the concerns outlined above regarding the applicant's spouse's unfamiliarity with the language and customs and the applicant's spouse's child's inability to relocate to Moldova to be with her mother due to the custody agreement between the applicant's spouse and her ex-husband, the AAO concludes that the applicant's U.S. citizen

² The U.S. Department of State confirms that Moldova is one of the poorest countries in Europe. See *Background Note-Moldova*, U.S. Department of State, released February 2009.

spouse would experience extreme hardship were she to accompany the applicant to Moldova based on his inadmissibility.

A review of the documentation in the record, when considered in its totality reflects that although the applicant has established that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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 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.