H2

**U.S. Department of Homeland Security**
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

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

[redacted]

FILE: [redacted] OFFICE: MOSCOW Date: MAY 12 2004

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION**: The waiver application and application for permission to reapply for admission were denied by the Officer in Charge (OIC), Moscow, and are now before the Administrative Appeals Office (AAO) on appeal. Both appeals will be sustained and both applications approved.

The applicant is a native and citizen of Russia who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation. In addition, she was removed from the United States under section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1). The applicant married a citizen of the United States on May 13, 2000. The applicant is the beneficiary of an approved Petition for Alien Relative and seeks the above waiver of inadmissibility and permission to reapply for admission in order to reside in the United States with her husband.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application for a waiver of inadmissibility. She further found that the applicant did not warrant an exercise of discretion in the granting of permission to reapply for admission. *See* Decisions of the Officer in Charge, dated November 6, 2003.

On appeal, counsel contends that the decision of the OIC was capricious and arbitrary and an abuse of the discretionary authority of the Service. He further asserts that the applicant did not commit fraud in the submission of her DS-230 form at the time of her interview at the Embassy in Moscow, and requests oral argument.

The AAO notes that while it is unclear exactly what took place at the time of her interview at the embassy and whether there was a misunderstanding or an attempt at misrepresentation, the fact remains that the applicant attempted to enter the United States on December 26, 1999 using a Canadian baptismal certificate that did not belong to her. She is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Act as charged.

Pursuant to 8 C.F.R. § 103.3(b) an affected party must explain in writing why oral argument is necessary. Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied

In a brief submitted in support of the appeal, counsel provided a letter from the applicant's husband, Mr. [redacted] outlining his personal situation, including his family life and connection to his community, an explanation of the events at the embassy in Moscow that resulted in an additional charge of misrepresentation, a description of the events of December 1999 which led to his wife's removal from the United States, and a listing of the hardships he will experience if his wife is not allowed to join him in the United States. Also included in the brief are financial statements indicating Mr. [redacted] losses, both personally and in relation to his business, and letters from business colleagues and mental health professionals regarding his mental state since experiencing the difficulties with his wife's immigration status.

The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

(1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant attempted to procure entry into the United States by falsely representing herself to be a Canadian citizen.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

*Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

Susan Baum, Ph.D. stated in a December 9, 2003 letter that she had seen both the applicant and her husband in 18 sessions between March and August 2002 when they were residing in Canada. She stated that Mr. [redacted] was experiencing considerable depression and anxiety that was exacerbated by the tension of awaiting news about his wife's visa. She expressed her belief that not knowing where the family will live and how they could be a family brought extreme psychological disturbance to Mr. [redacted]

In a letter dated December 12, 2003, Sally Kendrick, a licensed therapist, stated that she had seen Mr. [redacted] poradically since his marriage to the applicant and had noted that since the applicant's waiver application was denied in November 2003 his condition had worsened. She further stated that the prospect of a forced disintegration of his family had plunged Mr [redacted] nto despair and deep depression despite anti-depressant medication.

Roger Soucy, Director of Human Relations at Mr. company noted in a December 8, 2003 letter that Mr. has found it difficult to focus his attention on the operation of his company while traveling to see his wife, causing serious operational problems and lost opportunities for the company. He expressed his opinion that if were to fail it would have devastating emotional as well as financial impact on Mr. Financial documents included with the brief show a steady and significant decrease in sales and profit for since 2000 and a dramatic decrease in Mr. personal finances since his marriage to the applicant.

When viewed in its totality, the psychological and financial impact of the separation of Mr. and the applicant rises to the level of extreme hardship. The extreme depression and financial losses suffered by Mr. are beyond the normal hardship experienced by applicants for a waiver under section 212(i) of the Act.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary, Department of Homeland Security, and pursuant to such terms, conditions, and procedures as he may by regulations prescribe.

In the present case, the favorable factors include the extreme hardship to the applicant's husband, the lack of any criminal record, and an approved I-130 immigrant petition.

The unfavorable factor is her attempt to enter the United States using a document that was not hers.

While the AAO cannot condone her actions, it finds that the favorable factors outweigh the unfavorable and, therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

Aside from the waiver of inadmissibility, there still remains the issue of permission to reapply for admission based on her removal on December 26, 1999.

Section 212(a)(9) of the Act states in pertinent part:

> (A) Certain alien previously removed.-
>
> (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.
>
> (ii) Other aliens.- Any alien not described in clause (i) who-
>
> (I) has been ordered removed under section 240 or any other provision of law, or
>
> (II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the

> case of an aliens convicted of an aggravated felony) is inadmissible.
>
> (iii) Exception. – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the aliens' reapplying for admission.

For the same reasons as stated above, the favorable factors outweigh the unfavorable factors and the applicant warrants a favorable exercise of discretion in this matter.

In discretionary matters, the applicant bears the full burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957); *Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden.

**ORDER:** The appeals are sustained and the applications approved .