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U.S. Department of Justice  
Immigration and Naturalization Service



OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: [Redacted] Office: NEWARK, NEW JERSEY

Date: **JAN 31 2003**

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)

IN BEHALF OF APPLICANT:



**INSTRUCTIONS:**

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Newark, New Jersey, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Poland 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 sought to procure admission into the United States by fraud or willful misrepresentation. The applicant is the son of a naturalized United States citizen father and lawful permanent resident mother. He is the beneficiary of an approved petition for alien relative and seeks the above waiver in order to remain in the United States and adjust his status to that of a lawful permanent resident.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, counsel asserts that the district director's decision to deny the applicant's waiver request was arbitrary, unreasonable, and contrary to the law in that the applicant's departure will cause extreme hardship to the applicant's parents who rely upon him for emotional, physical, and financial support. Counsel states that the applicant's parents are both elderly and have medical problems that are documented in the record.

The record reflects that the applicant sought to procure admission into the United States on February 12, 1994 by presenting a fraudulent passport.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-  
Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

\* \* \*

(6) ILLEGAL ENTRANTS AND IMMIGRATION VIOLATORS.-

\* \* \*

(C) MISREPRESENTATION.-

(i) IN GENERAL.-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 states:

ADMISSION OF IMMIGRANT INADMISSIBLE FOR FRAUD OR WILLFUL MISREPRESENTATION OF MATERIAL FACT.-

(1) The Attorney General may, in the discretion of the Attorney General, 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 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.

(2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Sections 212(a)(6)(C) and 212(i) of the Act were amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009. There is no longer any alternative provision for waiver of a section 212(a)(6)(C)(i) violation due to passage of time. In the absence of explicit statutory direction, an applicant's eligibility is determined under the statute in effect at the time his or her application is finally considered. See Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999).

If an amendment makes the statute more restrictive after the application is filed, the eligibility is determined under the terms of the amendment. Conversely, if the amendment makes the statute more generous, the application must be considered by more generous terms. Matter of George and Lopez-Alvarez, 11 I&N Dec. 419 (BIA 1965); Matter of Leveque, 12 I&N Dec. 633 (BIA 1968).

After reviewing the amendments to the Act and to other statutes regarding fraud and misrepresentation from 1957 to the present time, and after noting the increased penalties Congress has placed on such activities, including the narrowing of the parameters for eligibility, the re-inclusion of the perpetual bar and eliminating children as a consideration in determining the presence of extreme hardship, it is concluded that Congress has placed a high priority on reducing and/or stopping fraud and misrepresentation related to immigration and other matters.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for section 212(i) relief, once established, it is but one favorable discretionary factor to be considered. See Matter of Mendez, 21 I&N Dec. 296 (BIA 1996).

In Matter of Cervantes-Gonzalez, *supra*, the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act include, but are not limited to, the following: 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 finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

The record reflects that the applicant's parents are natives of Poland. The mother, a sixty-two year-old lawful permanent resident of the United States, states that she suffers from diabetes and high blood pressure, has had breast and uterine cancer, was hospitalized for a thyroid condition in 2001, and is constantly taking medication. She asserts that the applicant is very important to her and that permission for him to live in the United States would greatly relieve her financial and medical burdens. The applicant's father, who naturalized as a citizen of the United States in 1996, is sixty-seven years-old, retired, and receives social security benefits of \$407.00 per month. The father states that he has screws and a plate in his right leg and that having the applicant in the United States would be of tremendous help to him and his wife.

In Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. The common results of deportation are insufficient to prove extreme hardship. See Hassan v. INS, 927 F.2d 465 (9th Cir. 1991). Further, the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being removed. See Shoostary v. INS, 39 F.3d 1049 (9th Cir. 1994).

In INS v. Jong Ha Wang, 450 U.S. 139 (1981), the court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the factors presented, and the aggregate effect of those factors, indicates that the applicant's parents would suffer hardship due to separation. The applicant has failed, however, to show that his qualifying relatives would suffer extreme hardship over and above the normal disruptions involved in the removal of a family member. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing the favorable or unfavorable exercise of the Attorney General's discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See Matter of T-S-Y-, 7 I&N Dec. 582 (BIA 1957). Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.