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U.S. Citizenship
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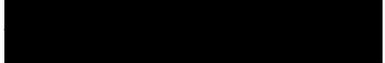
FILE:



Office: CHICAGO, IL

Date: JUN 10 2005

IN RE:



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

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) 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 pursuant to 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 procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized citizen of the United States and the son of a naturalized citizen and lawful permanent resident of the United States. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse, parents, and children.

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 for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated July 5, 2002.

On appeal, counsel states that the decision of the district director did not consider the affidavit of the applicant's spouse in denying the waiver. Further, counsel asserts that extreme hardship should be found to exist where the applicant has extensive family ties in the United States, long residence in the United States and where his family would suffer extreme economic hardship if he were forced to return to Poland. *Form I-290B*, dated August 2, 2002.

In support of these assertions, counsel submits a brief, dated September 13, 2002; copies of naturalization certificates, U.S. passports and resident alien cards of the applicant's relatives in the United States and copies of tax and financial documents for the applicant and his spouse, including documents submitted in February 2004. The record also contains an affidavit of the applicant's spouse, dated January 22, 2002. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that, in 1994, the applicant obtained admission to the United States by presenting a false Polish passport containing a U.S. visa to an immigration official.

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.

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 himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse and parents. 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 (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.

Counsel contends that extreme hardship would be imposed on the applicant's spouse if she remains in the United States in the absence of the applicant. Counsel contends that the applicant's spouse will endure financial hardship in attempting to provide for her children in the absence of the applicant. *Brief on Appeal*, dated September 13, 2002. Counsel submits copies of tax returns for the couple to support his assertion that the applicant's spouse is unable to earn enough money to support her family. *Brief on Appeal* at 2. The AAO notes that evidence of the current employment undertaken by the applicant's spouse does not serve to establish that she is unable to work full-time or that she is unable to obtain more lucrative employment. Counsel contends that the couple's mortgage payment is too high for the applicant's spouse to afford alone. *Id.* The AAO finds that, although unfortunate, the need to alter one's housing arrangements standing alone does not form the basis for a finding of extreme financial hardship. Moreover, the record fails to demonstrate that the applicant will be unable to contribute financially to his family from a location outside of the United States.

Counsel asserts that the applicant has extensive family ties in the United States. *Id.* at 1-2. Counsel indicates that the applicant does not have family remaining in Poland. *Id.* at 2. The AAO reiterates that hardship suffered by the applicant is irrelevant to waiver proceedings pursuant to section 212(i) of the Act; the operative factor concerning family ties identified in *Matter of Cervantes-Gonzalez* is the *qualifying relative's* family ties outside of the United States. 22 I&N Dec. at 566. To the extent that counsel is attempting to establish that extreme hardship would be imposed on the applicant's spouse and/or parents by relocating to Poland to remain with the applicant, a lack of family ties in that country standing alone does not establish such hardship. Moreover, the AAO notes that the record does not address the remaining factors identified in *Matter of Cervantes-Gonzalez* as a means of establishing such hardship.

The AAO acknowledges counsel's assertion that the applicant's parents are qualifying relatives for the purposes of waiver proceedings under section 212(i) of the Act. *Id.* at 3. Counsel indicates that the decision of the district director did not recognize the hardship of the applicant's parents and therefore the substance of that decision is called into question. *Id.* The AAO finds counsel's assertion unfounded as the evidence submitted to the district director contained no documentation of hardship suffered by the applicant's parents beyond their identification as qualifying relatives. The AAO notes that the record on appeal contains only the assertions of counsel in regard to the applicant's parents without further substantiation of hardship imposed on them by the applicant's inadmissibility.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch* held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that 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 deported. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse and parents will endure hardship as a result of separation from the applicant. However, their situation, if they remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and parents caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of 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* 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.