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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H12

[Redacted]

FILE:

[Redacted]

Office: CONNECTICUT

Date:

SEP 28 2005

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).

ON BEHALF OF APPLICANT:

[Redacted]

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, Connecticut, 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 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 and procuring entry into the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his permanent resident spouse.

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 District Director*, dated May 27, 2004.

On appeal, counsel for the applicant contends that if the applicant is prohibited from remaining in the United States his spouse will suffer emotional and economic hardship. *Brief in Support of Appeal*, dated June 15, 2004.

The record contains a brief from counsel; an affidavit from the applicant's spouse; letters from two of the applicant's stepsons; an affidavit from the applicant; a letter from the employer of the applicant's spouse; a copy of the applicant's 2003 IRS Form 1040, U.S. Individual Income Tax Return; a letter from the applicant's spouse in support of the Form I-601, Application for Waiver of Ground of Excludability, and; documentation of current conditions in Poland. The entire record was reviewed and considered in rendering this decision.

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

- (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 that:

- (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 on July 9, 1995 and November 13, 1995 the applicant attempted to enter the United States using a Polish passport in which his photograph had been substituted for that of the true owner. Thus, the applicant attempted to procure admission to the United States by willfully misrepresenting a material fact, namely his identity. Therefore, the applicant 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). The applicant does not contest his inadmissibility on appeal.

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 hardship suffered by the applicant's spouse. 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 Bureau 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.

On appeal, the applicant's spouse states that she would suffer emotional hardship should the applicant be prohibited from remaining in the United States. *Statement from Applicant's Spouse*, dated June 11, 2004. The applicant's spouse provides that she has two sons, two sisters, and one grandson in the United States, yet she has no relatives or connections in Poland. *Id.* at 1. The applicant's spouse indicates that she has limited education, and she has worked for the previous six years as an assembler. *Id.* at 2. The applicant's spouse contends that she would be unable to obtain employment or pension benefits in Poland. *Id.* The applicant's spouse further states that it would be difficult for her to adjust to life in Poland, as it has changed since she resided there. *Id.* The applicant states that his wife's physical and emotional condition will deteriorate if they are separated. *Statement from Applicant on Appeal*, dated June 11, 2004.

The record contains a letter from the employer of the applicant's spouse that indicates that she is employed on a full-time, permanent basis as an assembler at an hourly rate of \$13.19. *Letter from Employer of Applicant's Spouse*, dated July 16, 2003.

Counsel for the applicant contends that if the applicant is prohibited from remaining in the United States his spouse will suffer emotional and economic hardship. *Brief in Support of Appeal*, dated June 15, 2004. Counsel reiterates that the applicant's spouse has numerous family members in the United States, yet she has no ties or employment opportunity in Poland. *Id.* at 3-5. Counsel contends that the applicant's spouse has suffered from depression, and that it would recur should she be separated from the applicant. *Id.* at 6. Counsel asserts that all of the elements of hardship to the applicant's spouse, considered together, constitute extreme hardship. *Id.* at 7.

Upon review, the applicant has not established that his wife will experience extreme hardship if he is prohibited from remaining in the United States. The applicant's spouse asserts that she will endure emotional distress as a result of the applicant's absence, yet she will be deprived of the companionship of her family in the United States should she relocate to Poland. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant or her family members. However, her situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme

hardship based on the record. 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*, 21 I&N Dec. 627 (BIA 1996), 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.

The applicant's spouse provides that she will suffer economic hardship if she relocates to Poland, as she lacks education and employment opportunities there. It is noted that, as a permanent resident, the applicant's spouse is not required to reside out of the United States as a result of the applicant's inadmissibility. The record reflects that the applicant's spouse holds a permanent, full-time position in the United States. The applicant has not established that his spouse will be unable to meet her financial needs without his assistance should she continue to work for her current employer in the United States. Moreover, 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.

Counsel asserts that the applicant's spouse has suffered from depression in the past, and that such depression may recur should she be separated from the applicant. However, the record lacks evidence that the applicant's spouse has received a professional diagnosis of depression, or that she has sought or received treatment for such condition. 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)). Thus, the applicant has not shown that his spouse will endure emotional distress that requires medical attention or constitutes extreme hardship.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's spouse should the applicant be prohibited from remaining in the United States, considered in aggregate, do not rise to the level of extreme hardship. 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(a)(6)(C) 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.