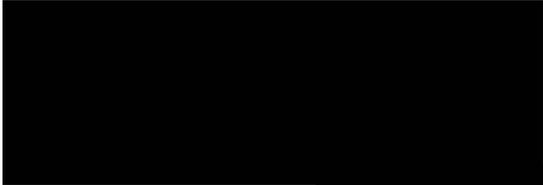


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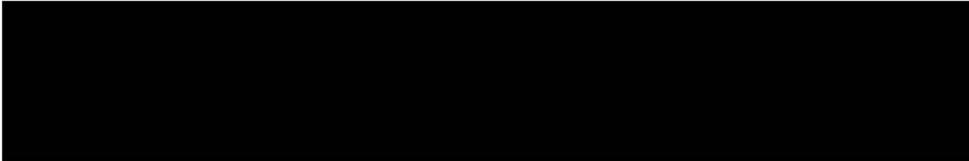
IN RE:



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.

A handwritten signature in black ink, appearing to read "James A. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, IL, 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 (U.S.) 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 procured admission into the United States by fraud or willful misrepresentation in April 1994. The applicant is married to a U.S. citizen and his mother is a lawful permanent resident. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director found that the applicant did not submit any evidence to support the assertions concerning the economic conditions in Poland, nor did he submit any documentation to show that his spouse would suffer financial hardship if he were removed from the United States. The director stated that the applicant's child was young enough to easily assimilate into the Polish culture if she chose to relocate with the applicant. The director concluded after considering all the factors in the applicant's case and in the absence of favorable factors the applicant's waiver application must be denied. The application was denied accordingly. *Decision of the District Director*, dated January 24, 2005.

On appeal, counsel states that the evidence in the record as well as the additional evidence submitted on appeal, should provide a basis for the reversal of the Director's decision and the granting of the applicant's waiver of inadmissibility. *Counsel's Appeal's Brief*, undated.

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 indicates that during the applicant's adjustment interviews on September 20, 2001 and October 30, 2003 he stated under oath that he last entered the United States in 1994 when he presented a fraudulent Polish passport and immigrant visa to procure admission to the United States. 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. Hardship the alien himself experiences or his child experiences due to separation is irrelevant to section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or mother. 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).

The AAO notes that extreme hardship to the applicant's spouse and/or mother must be established in the event that they reside in Poland or in the event that they reside in the United States, as they are not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The AAO notes that hardship to the applicant's lawful permanent resident mother was not addressed in his application so this analysis will focus only on hardship to the applicant's spouse.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Poland. The applicant's spouse submitted documentation to show that she has knee and back problems, which she receives therapy for. In addition, the applicant's spouse has been unemployed for 4 years and the applicant states that relocating to Poland would create a great financial hardship. The applicant submitted a country report for Poland showing that the unemployment rate in Poland was 19.7 % in 2004. The applicant did not submit any documentation to show that he would have difficulty finding employment in his specific line of work. The AAO notes that the applicant's spouse provides no documentation to show that she would be unable to find the same types of therapy in Poland that she is receiving in the United States for her injuries. Furthermore, the record indicates that the applicant and his spouse are from the same town in Poland. The applicant's spouse speaks the Polish language and no documents were submitted to show that she would have problems integrating into the Polish cultural. Thus, the AAO finds that the applicant has not established that his spouse would suffer extreme hardship as a result of relocating to Poland.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Although, the applicant's spouse has been unemployed for the past 4 years, the record does not reflect that she would be unable to return to work and provide for her children without the applicant's income. The applicant's spouse submitted medical documents concerning her injuries, but these documents show that she is mobile enough to care for her children. They reflect that the injuries do not prohibit her from working. The applicant states that he and his spouse purchased a house, but there is no documentation to show the purchase of a home or the payments made to the mortgage of a home. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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.