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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 "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 presenting false documents to an immigration officer for the purpose of gaining admission to the United States. The record indicates that the applicant is the wife of a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 her United States citizen husband.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's husband and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director Decision*, dated May 2, 2005.

It is noted that the applicant, through counsel, requested a 30-day extension to submit a brief and/or evidence, but nothing was submitted within 30-days. On February 22, 2007, in response to a facsimile from the AAO, counsel indicated that she would not be submitting further evidence. Therefore, the record must be considered complete.

On appeal, the applicant, through counsel, asserts the District Director erred in denying the applicant's waiver of inadmissibility, by failing "to give sufficient weight to the psychological evaluation of [REDACTED] who evaluated the applicant's U.S. citizen spouse and determined that he suffered from several medical conditions and would suffer extreme psychological trauma" if the applicant were removed from the United States. *Form I-290B*, filed May 31, 2005. Additionally, counsel claims the District Director "failed to give sufficient weight to the letter provided by [REDACTED]'s medical doctor, [REDACTED] who treats him for anxiety disorder, among other conditions." *Id.*

The record includes, but is not limited to, an affidavit from the applicant, an affidavit from the applicant's spouse, and medical reports and a psychological evaluation for the applicant's husband. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (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.
- ...
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

- (i) (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 immigrant 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 AAO notes that the record contains several references to the hardship that the applicant's siblings would suffer if the applicant were denied admission into the United States. Section 212(i) of the Act provides that a waiver, under section 212(a)(6)(C)(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to United States citizen or lawful permanent resident siblings. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's siblings will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that the applicant and [REDACTED] married on June 21, 1997, in Poland. On April 1, 1999, the applicant entered the United States by using a fraudulent passport. On July 30, 2002, [REDACTED] became a naturalized United States citizen. On September 26, 2002, the applicant's husband filed a Form I-130 and an Application to Register Permanent Residence or Adjust Status (Form I-485). On July 15, 2004, the Form I-130 was approved. On October 6, 2004, the applicant filed a Form I-601. On May 2, 2005, the District Director denied applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to her United States citizen husband.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen husband, not the applicant's siblings or the applicant's husband's siblings. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

The applicant's spouse asserts that he would face extreme hardship if he relocated to Poland in order to remain with the applicant. The applicant's husband states he "cannot imagine having to be separated from [his] wife...[and he] would certainly suffer an extreme hardship having to be torn away from everything here and try to start over with nothing in Poland. [He worries] about supporting [his] wife, paying [their] medical bills, and most of all, receiving good medical care in Poland." *Affidavit of* [REDACTED] page 4, dated October 6, 2004. The AAO notes that the applicant's husband is a native of Poland, who spent his formative years in Poland, he speaks Polish, and he has some family ties to Poland. The applicant's spouse states he has "spent the past fourteen (14) years building a life for [himself] in the U.S...[he] gained all [his] work experience in this country. During all these years [he had] trainings and courses to increase [his] qualifications and [his] experience." *Id.* at 2. The AAO notes that the applicant's husband is an experienced mechanic, and it has not been established that he has no transferable skills that would aid him in obtaining a job in Poland. [REDACTED] states the applicant's husband suffers from "anxiety disorder, umbilical hernia, and hyperlipedemia [sic]." *Letter by* [REDACTED], dated September 27, 2004. The AAO notes that the applicant's husband was scheduled for surgery to repair the umbilical hernia on October 11, 2004, and presumably this condition has been corrected. Additionally, the medical reports state the applicant's husband is overweight, which could be a cause of the hyperlipidemia (high cholesterol). *See Consultation Record*, dated December 2, 2002; *Psychological Evaluation by* [REDACTED] page 2, dated August 27, 2004. The applicant's husband states that "the current medical system in Poland is very poor." *Affidavit of* [REDACTED] *supra* at page 3. However, he failed to provide any evidence demonstrating that he could not receive medical treatment for his problems in Poland. Counsel fails to establish extreme hardship to the applicant's husband if he joined the applicant in Poland.

Counsel does not establish extreme hardship to the applicant's husband if he remains in the United States. [REDACTED] states the applicant's husband "lacks psychological hardiness and is quite susceptible to stress...The current stress of waiting to learn whether [the applicant] will be allowed to remain in the U.S. with him has clearly resulted in exacerbation of his physical problems, as well as led him to drink more than he should at times as an attempt to medicate the stress...If he is forced to remain here without her, or to leave the U.S. in order to remain with her, then his limited coping resources will be overwhelmed, and the likelihood becomes great that he will show worsening emotional, behavioral, and/or psychosomatic symptoms." *Psychological Evaluation by* [REDACTED] *supra* at pages 3-4. The AAO notes that [REDACTED] states the applicant's husband is overweight, has difficulty sleeping, and has been drinking alcohol more heavily in recent years, which contributes to the applicant's husband's emotional and psychological wellbeing. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the generalized anxiety disorder suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist,

thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The AAO notes that the applicant's husband has a full-time position as a mechanic, with good medical insurance. Additionally, the applicant's husband has some family residing in the United States. As a United States citizen, the applicant's husband is not required to reside outside of the United States as a result of denial of the applicant's waiver request. The AAO notes that the income from the applicant's husband's employment appears to be the main source of income for the family. *See 2002 and 2003 U.S. Individual Income Tax Returns*, dated February 1, 2003 and February 16, 2004, and *Wage and Tax Statements for [REDACTED]*. It does not appear that the applicant's husband will experience a major financial hardship as a result of the separation from the applicant. The applicant's husband faces the decision of whether to remain in the United States or relocate to avoid separation. However, this is a factor that every case will present, and the BIA has held, "election by the spouse to remain in the United States, absent [a determination of exceptional hardship] is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *Matter of Mansour*, 11 I&N Dec. 306, 307 (BIA 1965). Further, beyond generalized assertions regarding country conditions in Poland, the record fails to demonstrate that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

Although the AAO is not insensitive to the applicant's situation, the emotional hardship of separation is a common result of separation and does not rise to the level of "extreme" as contemplated by statute and case law. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists. The AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation if he remains 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.

United States 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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 husband 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 she 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.