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U.S. Citizenship  
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APR 23 2007

FILE:

Office: CHICAGO DISTRICT OFFICE

Date:

IN RE:

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

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, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The applicant, a citizen of Poland, was found inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crimes involving moral turpitude. The applicant is the spouse of a United States citizen and the mother of two United States citizen children. She seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with her husband and family.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that her husband and children would suffer extreme hardship if she were required to return to Poland. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2) of the Act provides, in pertinent part:

(A)(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

- (h) The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

- (1) (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .<sup>1</sup>

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<sup>1</sup> The AAO notes that section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, CIS must then assess whether to exercise discretion.

Regarding the applicant's grounds of inadmissibility, the record reflects that she was convicted of criminal damage to property on April 19, 1993 and convicted of retail theft on September 28, 2004.

Having established the governing law, the first issue to be addressed is whether the applicant's return to Poland would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion.

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals (BIA) 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. 22 I&N Dec. at 565-566.

The district director found the applicant inadmissible based upon the applicant's commission of a crime involving moral turpitude. As these crimes were committed after the applicant's eighteenth birthday, the district director correctly found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest this finding.

On appeal, counsel contends that the applicant's family would suffer extreme hardship if the applicant were required to return to Poland, and submits additional documentation in support of the application. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant's husband is a thirty-nine-year-old citizen of the United States. He and the applicant have been married since June 16, 1990, and are the parents of three United States citizen sons, born in 1993, 1995, and 2001. The oldest son died during infancy, and is buried near the family's home.

The applicant is a homemaker; she provides full-time childcare to the couple's two sons.

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 (9<sup>th</sup> 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 *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Court of Appeals for the Ninth Circuit defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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 concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) the BIA held that:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

The applicant contends that her husband and children would face extreme hardship if she returns to Poland. In this case, the applicant must establish that extreme hardship would ensue in three scenarios: (1) if the applicant's husband and children accompany her to Poland; (2) if the applicant's children and husband remain in the United States without her; and (3) if the applicant's children accompany her to Poland but her husband remains in the United States.

The AAO finds that the applicant's children would experience extreme hardship under the first and third scenarios; i.e., they would face extreme hardship if they accompanied the applicant to Poland, regardless of whether their father accompanied them. The applicant's sons are six and eleven years old. They have resided in the United States since birth and, according to the applicant's husband, do not speak Polish well. As they do not speak Polish fluently, they would likely struggle in the Polish education system. The record indicates that they are fully integrated into the United States lifestyle and education system. In *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001), the BIA found that a fifteen-year-old child who had lived her entire life in the United States, was completely integrated into the American lifestyle, and was not fluent in the Chinese language, would suffer extreme hardship if she relocated to Taiwan. The AAO finds that a similar fact pattern has been established in this case.

The AAO also finds that the applicant's husband and children would experience extreme hardship if they remained in the United States without the applicant. The AAO notes that the applicant currently provides full-time care for the children. If the applicant returned to Poland, the family's standard of living would decline considerably, as the applicant's husband would be required to seek out private child care while simultaneously contributing to his wife's household in Poland. Moreover, the record demonstrates that the applicant's husband works long hours, and the children would suffer, as they would be required to spend a great deal of time in extended child-care. The record does not establish that there are family members in the area to assist the applicant's husband in raising the children.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe.

The favorable factors in this matter are the extreme hardship the applicant's husband and children would face if the applicant were to return to Poland, regardless of whether they accompanied her or remained in the United States, United States citizen spouse, United States citizen children, apparent remorse over her previous behavior, subsequent rehabilitation, and the passage of ten years since the most recent violation. The unfavorable factors in this matter are the applicant's repeated criminal violations.

The AAO finds that the crimes committed by the applicant are serious in nature and cannot be condoned. Nonetheless, it also finds that the hardship imposed on the applicant's husband and children as a result of her inadmissibility outweighs the unfavorable factors in this application. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

**ORDER:** The appeal is sustained. The waiver application is approved.