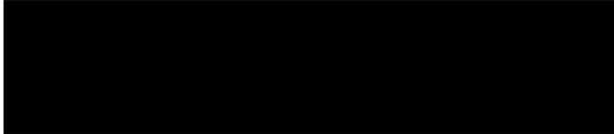


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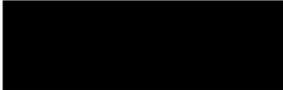
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and Immigration
Services

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FILE:



Office: PHOENIX, AZ

Date:

FEB 02 2007

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:

SELF-REPRESENTED

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, Phoenix, Arizona 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 admission into the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and 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 spouse and U.S. citizen daughter.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director, dated May 27, 2005.*

On appeal, the applicant contends that she never attempted to obtain a nonimmigrant visa through fraud. *Form I-290B.*

In support of these assertions the record includes, but is not limited to, letters from the applicant, dated June 14, 2005 and August 16, 2004; a letter of support from a friend; earnings statements for the applicant's spouse; tax statements for the applicant and her spouse; bank statements for the applicant and her spouse; a marriage certificate; and a memorandum from the U.S. embassy in Warsaw, 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 February 25, 1998 the applicant applied for a visa by submitting her expired Polish passport containing a counterfeit visa in order to obtain a new visa without the need for an interview with a Consular Officer. *See nonimmigrant visa application; Memorandum from U.S. embassy in Warsaw, Poland.* On her nonimmigrant visa application dated February 25, 1998, the applicant falsely stated that she received a previous visa on August 4, 1994. *Id.* The applicant was never issued a valid visa on August 4, 1994. *Memorandum from U.S. embassy in Warsaw, Poland.* While the AAO notes the applicant's assertion that she

never used a counterfeit document and that a man in line at the U.S. embassy assisted her in obtaining a visa (*see letters from the applicant, dated June 14, 2005 and August 16, 2004*), it finds that the record demonstrates that the applicant has procured admission into the United States by fraud or willful misrepresentation of a material fact. The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of the bar to admission resulting from a 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. The plain language of the statute indicates that hardship that the applicant's child or that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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 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 family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established in the event that he resides in the Poland or the United States, as he is 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.

If the applicant's spouse travels with the applicant to Poland, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in the United States, as were his parents. *Form G-325A of the applicant's spouse*. The record does not address whether the applicant's spouse has any family ties to Poland, whether he has ever visited Poland, or whether he speaks Polish. The applicant's spouse works in sales where he receives over \$16.00 an hour. *Id.*; *Earnings statements for the applicant's spouse*. The record fails to show that the applicant and her spouse would be unable to financially support themselves from a location outside of the United States. The record shows that the applicant and her spouse have a U.S. citizen daughter (*Form I-601*); however, the AAO notes that a child is not a qualifying relative in this particular case. The record fails to address any health issues that the applicant or her spouse may have, and whether adequate treatment would be available in Poland. The record fails to address the country conditions in Poland and whether they would be a factor in relocating for the applicant's spouse. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Poland.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The parents of the applicant's spouse reside in the United States, as does her daughter. *Form G-325A for the applicant's spouse; Form I-601*. The applicant and her spouse have been married since June 23, 2001. *Marriage certificate*. While the AAO acknowledges that separation from a loved one is difficult, 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. Separation from a loved one is a normal part of the removal process. In this particular case, the record fails to indicate that the emotional hardship is beyond that which would normally be endured when families are divided by removal. Accordingly, the hardship faced by the applicant's spouse as a result of her separation from the applicant does not rise to the level of extreme hardship.

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.