

Identifying data deleted to
prevent clearly ~~un~~ warranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave. NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

7/2



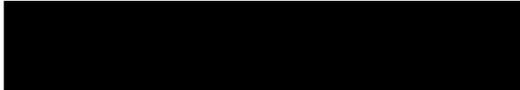
FILE:



Office: CHICAGO, IL

Date: JUN 04 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:



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, 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 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 seeking to procure admission (i.e. adjust status) and for procuring admission into the United States by fraud or willful misrepresentation. The applicant's spouse is a lawful permanent resident and his three children are U.S. citizens. He 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 his family.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated July 29, 2005.

On appeal, counsel asserts that the district director erred in failing to properly consider all of the hardships, applied a higher standard than in the statute and erred in relying on several court cases. *Form I-290B*, received August 29, 2005.

The record includes, but is not limited to, counsel's brief, statements from the applicant's spouse, financial records and tax returns for the applicant and his spouse, various bills of the applicant, report cards for the applicant's children, letters of support, photographs of the applicant's family and country conditions information on Poland. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was admitted into the United States on or about September 1994 with another person's passport. Furthermore, the applicant failed to disclose his prior misrepresentation on his adjustment of status application. *Applicant's Form I-485, Application to Register Permanent Residence or Adjust Status*, at 3, received August 28, 2000. As a result of these misrepresentations, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 AAO notes that section 212(i) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In the present case, the qualifying relative is the applicant's spouse. Hardship to the applicant's children is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship may affect the qualifying relative. If extreme hardship is established to the applicant's spouse, the Secretary then assesses whether an exercise of discretion is warranted.

Counsel asserts that the applicant's case is distinguishable from *Matter of Ngai*, 19 I&N Dec. 245 (Comm'r 1984) as the applicant in that case was not a financial burden to her spouse and there was a twenty-eight year voluntary separation between the couple. *Brief in Support of Appeal*, at 4, undated. The AAO notes that *Matter of Ngai* is not cited in the decision and also notes that the facts of the applicant's case differ from it.

Counsel asserts that the facts of the applicant's case differ from *Matter of Chumpitazi*, 16 I&N Dec. 629 (BIA 1978). *Id.* at 5. The AAO notes that the director's decision cites *Matter of Chumpitazi* to establish that extreme hardship is not a definable term of fixed and inflexible meaning and that it depends on the facts and circumstances of each case. *Decision of the District Director*, at 2. The case is not cited to establish analogous facts to the applicant's case and thus as a basis for denial. Counsel also distinguishes the facts of the applicant's case from *Matter of Pilch* 21 I & N, Dec. 627 (BIA 1996) and *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996). *Brief in Support of Appeal*, at 5-7. The AAO will adjudicate this case based on the relevant law, the standard of extreme hardship and the evidence presented.¹

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (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 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 she resides in Poland or in the event that she resides in the United States, as there is no requirement to reside outside of the United States based on denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event of relocation to Poland. Counsel states that the applicant's spouse immigrated to Chicago in 1993, her parents reside with her and are lawful permanent residents, and her three sisters live in the Chicago area. *Brief in Support of Appeal*, at 2-3. The applicant's spouse states that she sees her sisters and their families every weekend and she would be lonely without her parents and sisters. *Statement of the Applicant's Spouse*, at 2, dated September 26, 2005. Counsel states that the applicant and his spouse do not have a home or any immediate prospects of employment in Poland. *Brief in Support of Appeal*, at 12. In regard to ties to Poland,

¹ It is not clear why the district director cited *In re Francisco Javier Monreal-Aguinaga*, 23 I & N Dec. 56 (BIA 2001), a cancellation of removal case which deals with the standard of exceptional and extremely unusual hardship

the AAO notes that the applicant's spouse is originally from Poland and is therefore, familiar with the language and culture. In regard to country conditions, counsel states that the district director failed to consider that Poland is a very poor country compared to the United States and the applicant's spouse would suffer greatly because of the economy. *Id.* at 11. However, there is no evidence that the applicant's spouse experienced financial hardship while residing there previously. Neither does the general economic information submitted by counsel demonstrate the specific economic circumstances that would face the applicant's spouse if she relocated to Poland with the applicant. Moreover, the record indicates that both the applicant's parents continue to reside in Poland and they may be able to assist the applicant and his spouse financially. *Applicant's Form G-325A, Biographic Information*, dated June 30, 2000. A thorough review of the record does not evidence extreme hardship to the applicant's spouse in the event of relocation 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. Counsel states that the applicant's spouse has suffered extreme anxiety from the uncertainty of her husband's fate, the applicant is the breadwinner of the family and the applicant's spouse cares for the children. *Id.* at 9-10. Counsel states that the applicant's spouse needs the applicant to remain in the United States to work and support the children, and it is highly unlikely that the applicant would earn enough in Poland to contribute to her support and the support of their three children. *Id.* at 12. The applicant's spouse states that her family is Catholic and does not believe in divorce or family separation. *Statement of the Applicant's Spouse*, at 1. The applicant's spouse details the emotional and logistical support that the applicant provides to her. *Initial Statement of the Applicant's Spouse*, at 1-2, undated. While separation as a result of removal commonly creates emotional stress and financial and logistical problems, the record does not distinguish the hardships facing the applicant's spouse from those confronting other individuals who have relocated with family members upon removal. Although counsel asserts that the applicant would be unlikely to earn enough in Poland to contribute to the support of his family in the United States, the record offers no evidence that establishes that this would be the case. The applicant's spouse states that she does not know how she would support her family if the applicant is removed, but, again, the record does not establish that she would be unable to find employment to support herself and her children. The applicant's spouse also asserts that that her husband's removal would create tragedy and provoke illnesses and depression, but there is no medical or psychological report in the record that supports her claim. Accordingly, the record reflects that the applicant's spouse will face difficulties without the applicant, but does not demonstrate his removal would result in extreme hardship to her.

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. Moreover, the AAO notes that 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.

The AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative 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.