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FILE:

[REDACTED]

Office: FRANKFURT, GERMANY

Date:

JUN 25 2007

IN RE:

[REDACTED]

PETITION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h), and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:

[REDACTED]

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), Frankfurt, Germany, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

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 two crimes involving moral turpitude. The applicant is the spouse of a United States citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to return to the United States to be with his wife. The applicant was also found inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant, therefore, also seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The OIC 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's wife, contends that she would suffer extreme hardship if the applicant is required to remain in 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 . . .

Section 212(a)(9)(B) of the Act provides, in pertinent part:

- (B) Aliens Unlawfully Present.-

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
 - (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

- (v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Regarding the applicant's ground of inadmissibility under section 212(a)(2) of the Act, the record establishes that he was convicted of a crime involving moral turpitude in Poland on May 21, 2001. Specifically, he was convicted under Article 157 of Section 1 of the Polish Code of "causing bodily injury." The maximum penalty possible for such an offense is imprisonment for five years; the applicant was sentenced to a term of imprisonment of one year, which was suspended, and placed on probation for three years. Regarding the specific events that led to the applicant's conviction, the May 21, 2001 "Judgment Pronounced by the Court in the Name of the Republic of Poland" states the following:

On January 28, 2001 in Nowy Zmigrod, [the applicant] hit twice [the victim] in his face and back with a wooden rail. It caused the following bodily injury of [the victim]: perforation of tympanic membrane on the left side, pain on pressure in the area of mastoid bone behind the left ear, abrasion on left cheek and painfulness under scapula. The injuries led to health breakdown for more than 7 days.

The OIC correctly found the applicant inadmissible based upon the applicant's commission of this crime involving moral turpitude.

Regarding the applicant's ground of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), the record establishes that the applicant entered the United States, without inspection, in May 2001, and did not depart the United States until May 2005. The OIC found the applicant inadmissible based upon the four-year period of time that he was unlawfully present in the United States. As he had resided unlawfully in the United States for more than one year and then sought admission within ten years of his last departure, the OIC correctly found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Thus, the first issue to be addressed is whether the applicant's inadmissibility 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.

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 *Perez v. INS*, 96 F.3d 390 (9th 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 Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) 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.

In her first letter, dated September 17, 2005, the applicant's wife states her love for the applicant; states that she has known the applicant her entire life, and that he moved to the United States because the separation between the two of them had become a problem; and states her disappointment with his inadmissibility, because they had planned a church wedding ceremony for December 10, 2005.

The applicant's wife also submitted a second, and undated, letter in support of the Form I-601. In this letter, the applicant's wife stated that if the applicant's waiver application were denied, she would not be able to continue her education in the United States; that her standard of living would be decreased; that she would find it difficult to leave her family behind in the United States and return to Poland; that her current support of her husband is causing financial problems; that everything she has accomplished in life would be taken away if the waiver application is denied; that she has been under a great deal of stress; that her doctor has prescribed Zoloft for the depression she is feeling; that she has had to take an entire semester away from school and will have to miss another semester; and discusses the trouble she would have in establishing a career in Poland due to cultural and language difficulties.

The record also contains two letters from the couple's parish priest attesting to the applicant's good moral character.

The record also contains letters from two of the applicant's wife's college professors. The first letter, dated March 30, 2006, is from [REDACTED]. [REDACTED] states that separation from the applicant is severely disrupting the applicant's wife's ability to complete her college program, and that the distress she is feeling as a result of the separation is affecting her academic performance. The second letter, dated April 3, 2006, is from [REDACTED]. [REDACTED] reiterates [REDACTED] observations regarding the applicant's wife's decreased academic performance. She also states that the applicant's husband is developing symptoms of clinical depression.

The record also contains a letter from [REDACTED] the applicant's wife's physician since April 2004. [REDACTED] states that the applicant's wife is suffering from depression and prescribed medication for treatment. He recommends that the waiver application be approved.

Finding this evidence unconvincing of extreme hardship beyond that normally expected upon separation from a spouse, the OIC denied the waiver application on May 30, 2006.

The only new information submitted on appeal is a brief letter from the applicant's wife. In this undated letter, she states that the crime her husband committed was not recent; that the applicant regrets his crime; that the applicant has apologized to and reunited with the victim of his assault; that she has already selected the college from which she would like to obtain her master's degree; and that it would be very difficult for her to leave the United States now, as she has resided in the United States since she was ten years of age.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife will face extreme hardship if the applicant is refused admission. The record demonstrates that she faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to her situation, the financial strain of visiting the applicant in Poland and the emotional hardship of separation are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law. If the applicant's wife relocates to

Poland to join her husband, the cultural readjustment and career disruptions she would face would be expected hardships that an individual in her situation would face.

Again, court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship and have defined "extreme hardship" as hardship that is unusual or beyond that normally be expected upon the deportation or removal of a spouse. In this case, the applicant has not made such a demonstration.

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. As noted previously, United States court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship). The AAO finds that the OIC properly denied this waiver application. In adjudicating this petition, the AAO finds that the record fails to demonstrate that the applicant's wife would suffer hardship beyond that normally expected upon the removal or refusal of entry of a spouse.

The AAO finds that the applicant failed to establish extreme hardship to his United States citizen spouse.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, 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 not sustained that burden.

ORDER: The appeal is dismissed. The waiver application is denied.