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[Redacted]

FILE:

[Redacted]

Office: CHICAGO, ILLINOIS

Date:

DEC 30 2008

IN RE:

Applicant:

[Redacted]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting 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, [REDACTED] is a native and citizen of Poland who was found to be inadmissible to the United States pursuant to 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 committed a crime involving moral turpitude. The applicant sought a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), which the district director denied, finding the applicant failed to establish that extreme hardship would be imposed on a qualifying relative, *Decision of the District Director*, dated April 25, 2006.

The AAO will first address the finding of inadmissibility.

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

(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 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A), defines “conviction” for immigration purposes as:

A formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where –

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien’s liberty to be imposed.

The record reflects that the applicant pled guilty to two counts of burglary in the Circuit Court of Cook County, Illinois, on June 23, 2004, for which he was sentenced to two years of probation for each count and was ordered to pay fines, costs, fees, and restitution.

The applicant was found in violation of Chapter 38, section 19–1 of the Illinois Compiled Statutes (ILCS), which provides the following:

- (a) A person commits burglary when without authority he knowingly enters or without authority remains within a building, housetrailer, watercraft, aircraft, motor vehicle as

defined in the Illinois Vehicle Code, railroad car, or any part thereof, with intent to commit therein a felony or theft. . . .

The BIA has indicated that breaking and entering alone without the requisite intent to commit a crime involving moral turpitude is not sufficient to constitute a crime involving moral turpitude. *See, e.g., Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982) (burglary with intent to commit theft is a crime involving moral turpitude); *Matter of M*, 2 I&N Dec. 721 (BIA 1946) (breaking and entering without intent to commit larceny is not a crime involving moral turpitude); *Matter of G-*, 1 I&N Dec. 403 (BIA 1943), (entering a building in violation of section 405 of the New York penal law does not involve moral turpitude unless the record of conviction shows that the particular crime that the alien intended to commit upon his unlawful entry into a building involved moral turpitude).

The Illinois law under which the applicant was convicted states that a person commits burglary “with intent to commit therein a felony or theft.” As the language of section 19–1 encompasses an “intent to commit a felony,” which may or may not involve moral turpitude, the AAO will look to the record of conviction to determine whether the applicant has been convicted of a crime involving moral turpitude. The applicant did not submit the record of conviction in its entirety; he provided only the certified statement of conviction/disposition. The AAO is, therefore, unable to determine whether the full record of conviction would demonstrate that the applicant’s burglary convictions involved moral turpitude. As the burden is on the applicant to establish his admissibility to the United States, the AAO finds that, with regard to his burglary convictions, the applicant has failed to prove he is admissible pursuant to section 212(a)(2)(A)(i)(I) of the Act.

The AAO will now consider whether granting the applicant’s section 212(h) waiver is warranted.

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

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

(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 . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case are the applicant’s lawful permanent resident parents. If extreme

hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

On appeal, counsel states that the applicant's father adjusted status based upon an employment petition. Counsel states that jurisdiction for the instant case lies with the Seventh Circuit and extreme hardship should therefore not be narrowly construed as it has in the First and Ninth Circuits. According to counsel, *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), indicates that 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. Counsel states that the declarations by the applicant's parents are sufficient to establish extreme hardship. According to counsel, the applicant's father does not earn a sufficient salary to sustain himself in the United States and both of the applicant's parents have medical problems.

In rendering this decision, the AAO has carefully considered all of the documentation submitted in the record.

In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant 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 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's qualifying relative must be established if she or he joins the applicant, and alternatively, if she or he remains in the United States without him. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The applicant's parents make no claim of hardship to themselves if they were to join the applicant to live in Poland. Although they express concern about the applicant's ability to obtain employment in Poland, the BIA and courts have held that difficulties experienced in securing employment is not sufficient to establish extreme hardship. *See, e.g., INS v. Jong Ha Wang*, 450 U.S. 139, 144 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship;

Matter of Pilch, 21 I&N Dec. 627 (BIA 1996) (difficulty in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) (“difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment”); and *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship).

The applicant's parents convey that they have a close relationship with their 23-year-old son and would experience extreme hardship if separated from him. *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), indicates that emotional hardship caused by severing family and community ties are a common result of deportation.

Counsel claims that the statements made by the applicant's parents, which is that they require their son's financial assistance, is sufficient to establish extreme hardship. The AAO disagrees. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Because the applicant did not submit on appeal documentation of his father's income or the household expenses of his parents, the AAO cannot determine whether his parents have a sufficient income to meet their expenses. The AAO notes that the income tax records for 2004 show business income of \$13,811 and the applicant as financially dependent on his parents.

There is no documentation in the record reflecting that the applicant's mother has health problems or that his father is physically unable to work. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra*.

The applicant makes no claim of extreme hardship to his parents if they were to join him to live in Poland.

The applicant has failed to establish that the combination of hardships establishes extreme hardship to his father or to his mother if he or she were to remain in the United States without him, and alternatively, if he or she were to join him to live in Poland. In conclusion, the factors presented in this case do not constitute extreme hardship to a qualifying family member for purposes of relief under section 212(h) of the Act, 8 U.S.C. § 1182(h).

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), the burden of establishing that the application merits approval remains entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

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