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FILE:

Office: PITTSBURGH, PA

Date: JUN 26 2008

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(h) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) and § 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 Field Office Director, Pittsburgh, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Slovakia who was found to be inadmissible to the United States pursuant to section 212(a)(1)(A)(iv) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(1)(A)(iv) for having been determined to be a drug abuser or addict, section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182 (a)(2)(A)(i)(I), for violating a law related to a controlled substance and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a visa and attempting to procure admission into the United States by fraud or willful misrepresentation. The applicant's spouse is a U.S. citizen and the applicant seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. § 1182(h) and § 1182(i), in order to reside in the United States.

The field office 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 Field Office Director*, dated January 25, 2008.

On appeal, counsel asserts that the field office director applied an incorrect standard of law in determining that the applicant is inadmissible pursuant to section 212(a)(1)(A)(iv) of the Act, incorrectly found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act and applied an incorrect legal standard in determining whether one of the applicant's qualifying relatives would suffer extreme hardship pursuant to section 212(i) of the Act. *Form I-290B*, received February 25, 2008. Counsel also contends that the field office director applied an incorrect legal standard in determining that that applicant did not have a qualifying relative who would suffer extreme hardship pursuant to section 212(h). *Id.*

The record includes, but is not limited to, counsel's brief, counsel's Form I-601 cover letter, the applicant's statements, the applicant's spouse's statements, the applicant's spouse's custody agreement, country conditions information on Slovakia, the applicant's spouse's medical records, a psychological evaluation of the applicant's spouse, information on fibromyalgia and a social worker's letter for the applicant and her spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

Counsel asserts that the field office director erred in determining that the applicant was a drug abuser or addict under the Act. *Brief in Support of Appeal*, at 4, dated March 24, 2008. Counsel states that the field office director mentioned that the applicant was on a list of registered drug addicts, but failed to produce the list or cite to its location. *Id.* The AAO notes that there is no evidence in the record that the applicant has been registered as a drug addict in Slovakia, as stated by the field office director. *Notice of Intent to Deny*, dated August 29, 2007. Instead, the record reflects that the applicant was convicted on April 9, 2003 in Slovakia of unlawful possession of an intoxicating substance (0.50 grams of cannabis -- hemp). Both of the applicant's Form I-693 Medical Examinations fail to reflect that she is a drug addict or abuser. There is no evidence that she has used a substance listed in section 202 of the Controlled Substances Act which has resulted in physical or psychological dependence, as per 42 C.F.R. § 34.2(h). As such, the record does not reflect that the applicant is inadmissible as a drug abuser or addict pursuant to section 212(a)(1)(A)(iv) of the Act. However, the applicant's controlled substance conviction renders her inadmissible pursuant to section 212(a)(2)(A)(i)(II) of the Act.

The record also reflects that the applicant failed to disclose her arrest and conviction on a B-2 nonimmigrant visa application and on her Form I-485 application. Counsel asserts that the applicant became aware of her conviction after her I-485 interview when she first read her court documents, knowledge of falsity is necessary for a section 212(a)(6)(C)(i) finding of inadmissibility, the field office director did not address the social worker's report which reflected that the applicant was unaware of her conviction and the applicant did not commit a willful misrepresentation. *Supra.* at 9-10. Counsel asserts that the applicant first read the conviction documents that she received from the court in Slovakia in 2003 when she received her Notice of Intent to Deny. *Id.* at 10. The AAO notes that the Notice of Intent to Deny was issued on August 29, 2007. The record includes a report from a one-time meeting between the applicant and a social worker. The social worker asserts that the applicant's claim related to her unawareness of her criminal record is credible. *Social Worker's Letter*, at 3, dated December 7, 2007. However, the social worker's report, based on a single meeting with the applicant more than four years after her conviction, is not sufficient proof that the applicant was unaware of her criminal record. The judgment reflects that the applicant received a six month suspended sentence after a criminal investigation. *Judgment*, at 1, dated April 9, 2003. The applicant has not provided evidence from the relevant Slovakian authorities or Slovakian law that her criminal case was investigated and prosecuted without her involvement, knowledge or presence. As such, the AAO finds that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act

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

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

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance... is inadmissible.

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

(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)(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.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse, parent or child of the applicant. As section 212(i) of the Act is the more restrictive in determining who may qualify as a waiver applicant's qualifying relative, the AAO will first consider whether the record establishes that the applicant's spouse, his only qualifying relative for the purposes of section 212(i), would suffer extreme hardship were her waiver request to be denied. Hardship to the applicant's child will be considered to the extent that it causes hardship to the applicant's spouse. Once 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). The AAO notes that should the applicant fail to establish eligibility for a waiver under section 212(i) of the Act, it would serve no useful purpose to consider whether she may qualify under section 212(h) requirements.

*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. 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's spouse must be established in the event that he relocates to Slovakia or in the event that he remains in 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 first part of the analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to Slovakia. Counsel states that the field office director failed to address the failing health of

the applicant's spouse's parents and that the applicant does not have a relationship with her mother. *Brief in Support of Appeal*, at 12, dated March 24, 2008. Counsel states that the applicant's spouse's parents and extended family reside in the United States, his father is under continual medical care for heart issues, his mother receives treatment for debilitating kidney problems and it would be emotionally taxing for the applicant's spouse to leave his aging and ailing parents in the United States. *I-601 Cover Letter*, at 5, dated December 12, 2007. The AAO notes that the record does not include substantiating evidence of the applicant's spouse's parent's medical problems or that the applicant does not have a relationship with her mother. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See 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)). However, the AAO notes that the applicant's spouse will be separated from his parents.

Counsel states that the applicant's spouse has no ties to Slovakia, he does not speak Slovak, and he would be isolated and alienated from the community. *I-601 Cover Letter*, at 5. Counsel states that the applicant's spouse would be forced to end his employment, this would be highly disruptive to his life and career, the unemployment rate in Slovakia is high and it would be impossible for him to support his family. *Id.* at 5, 11. However, the record, although it contains general information on conditions in Slovakia, fails to provide evidence that the applicant or her spouse would not be able to obtain employment in Slovakia.

In regard to the field office director's finding that the applicant's spouse's fibromyalgia and asthma are not terminal and do not constitute medical hardship, counsel states that the analysis was faulty in that the field office director failed to address the relative inadequacy of health care in Slovakia, the applicant's spouse's medical care while traveling was based in the United States and the stress of relocating would exacerbate his conditions. *Brief in Support of Appeal*, at 12-13. The record reflects that fibromyalgia is a chronic condition characterized by widespread pain in the muscles, ligaments and tendons, and reducing stress is critical in the management of fibromyalgia. *MayoClinic Website Article on Fibromyalgia*, at 1,6, dated September 26, 2007. Counsel asserts that the applicant's spouse's prescription would be void in Slovakia, he would have to pay cash for medical services, he could not afford this due to lack of employment, pollution is severe in Slovakia and his asthma will be severely worsened. *I-601 Cover Letter*, at 15. Country conditions information in the record reflects that cash payment is expected for medical services unless an insurance number is presented, a local doctor must issue a prescription and medicines are generally available. *Consular Information Sheet for the Slovak Republic*, at 2, dated June 8, 2007. The record also reflects that Slovakia suffers from some of the worst air pollution in Europe. *Article on Slovakia from Encarta.MSN.com*, at 2, dated September 26, 2007. However, the AAO notes that the record does not include a medical diagnosis for the applicant of fibromyalgia or asthma. The record includes medical records from 1999 to 2001 which reflect that the applicant has endured back/neurological pain, but it is not clear if he was diagnosed with fibromyalgia. There are no current medical records or copies of prescriptions to support the applicant's claims of fibromyalgia or asthma.

Counsel states that the applicant's son would be unable to speak the language or understand the cultural differences and he would be deprived of relationships with his sister and grandparents. *Brief in Support of Appeal*, at 16. Counsel states that the applicant's spouse was granted legal and primary physical custody of his daughter from a previous marriage and it is highly unlikely that a Pennsylvania court would allow him to relocate her to Slovakia without her mother's permission. *Id.* at 13-14. The record reflects that the mother of

the applicant's spouse's daughter has partial physical custody of the child. *Custody Consent Order of the Westmoreland County Court of Common Pleas*, at 1, dated June 25, 2004. Counsel states that the daughter's biological mother visits her regularly and she would not be amenable to the daughter accompanying the applicant's spouse to Slovakia. *I-601 Cover Letter*, at 4. Considering the applicant's spouse's lack of ties to Slovakia, his loss of his current employment, that he will be raising his son in a foreign and unfamiliar environment, and his separation from his daughter, the AAO finds that the applicant's spouse would suffer extreme hardship if he moved to Slovakia

The second part of the analysis requires the applicant to establish extreme hardship in the event that her spouse remains in the United States. Counsel states that the applicant's spouse is often required to spend weeks abroad for work, he would be unable to care for his two children, he could remain in the United States only if the applicant remained to care for the children and his elderly parents are unable to care for the young children for long periods of time. *Brief in Support of Appeal*, at 12. However, the record is not clear as to the length of the applicant's spouse's trips abroad, the effect on the applicant's spouse due to temporary separation from his children, the effect on the applicant's spouse due to any hardship his children may experience, and whether his parents could care for the children while he is abroad. The record does not contain evidence that the applicant's spouse would experience emotional and/or financial hardship beyond that normally encountered due to separation from family members. Counsel states that the applicant's son would be deprived of his relationship with his mother during his formative years. *Id.* at 17. However, there is no evidence of the effect on the applicant's spouse due to his son's separation from the applicant.

Counsel asserts that the field office director failed to address the report of the applicant's spouse's physician. *Id.* at 13. The applicant's spouse was assessed by a psychiatrist who states that the applicant's spouse's fibromyalgia symptoms would worsen upon separation from his family. *Letter from [REDACTED], M.D.*, at 4, dated September 24, 2007. As mentioned previously, reducing stress is critical in the management of fibromyalgia. *MayoClinic Website Article on Fibromyalgia*, at 6. However, as the record does not establish that the applicant's spouse has been diagnosed with fibromyalgia, the aforementioned evidence is given minimal weight. Counsel states that separation would be a grievous emotional blow to the applicant's spouse as his previous marriage ended under unhappy circumstances. *I-601 Cover Letter*, at 3. Based on the record, the AAO finds that extreme hardship has not been established in the event that the applicant's spouse remains in the United States.

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 who are removed.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.