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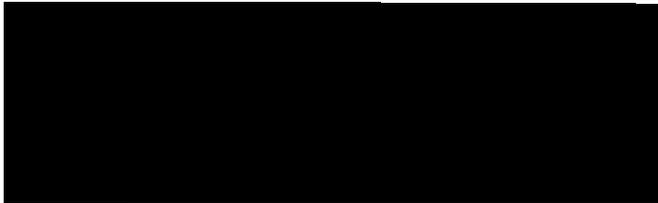
U.S. Department of Homeland Security  
20 Massachusetts Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
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*tlr*



FILE: [REDACTED] Office: FRANKFURT, GERMANY Date: **SEP 11 2008**

IN RE: Applicant: [REDACTED]

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

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 Officer-In-Charge (OIC), Frankfurt, Germany, 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)(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 crimes involving moral turpitude. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his United States citizen wife and daughter.

The OIC found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer-In-Charge*, dated August 7, 2007.

On appeal, the applicant, through counsel, asserts that the Service “failed to properly consider the evidence before it in rendering its [sic] decision. [The applicant] established ‘extreme hardship’ to his U.S. citizen immediate relatives should he be denied admission to the United States.” *Form I-290B*, filed August 31, 2007. Counsel contends that “the Service relied on improper [sic] facts including a ‘2006 arrest’ that could not relate to [the applicant] as he resided in Poland at that time.” *Id.* The AAO notes that counsel is correct in that the record does not establish that the applicant was arrested in 2006, in the United States or in Poland.

The record includes, but is not limited to, counsel’s brief, letters from the applicant’s wife, a psychological evaluation on the applicant’s wife, letters of recommendation from the applicant’s friends and family, various bills for credit cards and household expenses, and the criminal court dispositions for the applicant’s arrests and convictions. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on April 25, 1996, the applicant was convicted of retail theft, by a judge in the Circuit Court of Cook County, Illinois, and was sentenced to six (6) months probation. On August 30, 1996, the applicant was convicted of battery, by a judge in the Circuit Court of Cook County, Illinois, and was sentenced to fifteen (15) days community service and one (1) year probation. On September 10, 1996, the applicant was convicted of burglary, by a judge in the Circuit Court of Cook County, Illinois, and was sentenced to thirty-six (36) months probation. On November 8, 1996, the applicant was convicted of burglary, by a judge in the Circuit Court of Cook County, Illinois, and was sentenced to thirty-six (36) months probation.

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

(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...or an attempt or conspiracy to commit such a crime...is inadmissible.

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

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

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(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...

The applicant entered the United States with an immigrant visa on July 15, 1993. On May 1, 2000, a Notice to Appear (NTA) was issued against the applicant. On April 12, 2001, the applicant filed an Application for Naturalization (Form N-400). On February 15, 2002, the applicant's Form N-400 was denied. On October 19, 2001, an immigration judge ordered the applicant removed from the United States. On November 16, 2001, the applicant filed an appeal of the immigration judge's decision to the Board of Immigration Appeals (Board). On January 29, 2003, the Board dismissed the applicant's appeal. On February 28, 2003, the applicant filed a Petition for Review with the Seventh Circuit Court of Appeals (Seventh Circuit). On April 24, 2003, the applicant filed a motion to withdraw the Petition for Review, which the Seventh Circuit granted on May 9, 2003. On February 11, 2004, a Warrant of Removal/Deportation (Form I-205) was issued against the applicant. On May 20, 2004, the District Director, Chicago, Illinois, reopened the applicant's Form N-400; however, on the same day, the District Director issued an amended decision denying the applicant's Form N-400. On September 28, 2005, the applicant was removed from the United States. On October 25, 2005, the applicant's United States citizen spouse filed a Form I-130 on behalf of the applicant. On April 11, 2006, the applicant's Form I-130 was approved. On December 19, 2007, the applicant filed an Application for Permission to Reapply for Admission After Deportation or Removal (Form I-212) and a Form I-601. On August 7, 2007, the OIC denied the Form I-212 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relatives.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. A waiver under section 212(h) of the Act is dependent first upon a showing that

the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien himself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen wife and daughter. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in 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.

Counsel asserts that the applicant's United States citizen spouse and daughter would face extreme hardship if they joined the applicant in Poland. *See Appeal Brief*, filed August 31, 2007. Counsel states that after the applicant's removal from the United States, the applicant's wife "began experiencing psychological difficulties including depression and the like." *Id.* [REDACTED] Gould diagnosed the applicant's wife and her mother with depression. *Psychological Evaluation by [REDACTED]*, LCSW, CADC, dated June 26, 2006.

The AAO notes that hardship experienced by the applicant's mother-in-law is irrelevant to section 212(h) waiver proceedings, as she is not a qualifying relative. Additionally, although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on four interviews, given within a week, between the applicant's spouse and the social worker. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the generalized depression suffered by the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a week of interviews, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the social worker's findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The applicant's wife states she does not have any job opportunities in Poland and she has to help the applicant's mother with living and medical expenses since she was laid off from her job. *See letter from [REDACTED]*, dated August 25, 2007. Counsel states that the applicant's wife "has now found herself financially obligated to maintain her full time employment for the purposes of medical benefits and full financial obligations to her mother-in-law, daughter and husband overseas." *Appeal Brief, supra.* The AAO notes that the applicant's wife has been working in banking since 2002, and it has not been established that she has no transferable skills that would aid her in obtaining a job in Poland. Additionally, the applicant's wife failed to establish that she has to remain in the United States to provide financial assistance to her mother-in-law. The AAO notes that the applicant's wife is a native of Poland, she speaks Polish, and the

applicant and his wife have family ties in Poland. See *Psychological Evaluation by [REDACTED] LCSW, CADC, supra*. Additionally, the AAO notes that it has not been established that the applicant's daughter, who is 3 years old, would have difficulties rising to the level of extreme hardship in adjusting to the culture of Poland. The AAO finds that the applicant failed to establish that his wife and daughter would suffer extreme hardship if they accompany him to Poland.

In addition, the applicant does not establish extreme hardship to his wife and daughter if they remain in the United States. The applicant's wife states "[m]oving to Poland for [her] is not an option." *Letter from [REDACTED], supra*. She states all of her family resides in the United States and she does not want her daughter to be denied an American education. See *letter from [REDACTED] dated February 13, 2007*. As United States citizens, the applicant's wife and daughter are not required to reside outside of the United States as a result of denial of the applicant's waiver request. The applicant's wife states her "whole career is based on the United States market...and contacts that [she has] made over the years. [She] just started a new job at First Chicago Bank and Trust for \$68,000 a year." *Letter from [REDACTED], August 25, 2007*. The applicant's wife states that the applicant has not found a job in Poland; however, as stated above, hardship the alien himself experiences upon removal is irrelevant to section 212(h) waiver proceedings. The AAO notes that beyond generalized assertions regarding country conditions in Poland, the record fails to demonstrate that the applicant cannot obtain employment in Poland with his years of experience in the construction industry, or that he will be unable to contribute to his family's financial wellbeing from a location outside of the United States. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

United States 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 Board 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. In *Hassan, supra*, the Ninth Circuit Court of Appeals 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. The AAO recognizes that the applicant's United States citizen wife and daughter have endured hardship as a result of separation from the applicant. However, their situation if they remain in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and daughter 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(a)(2)(A) 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.