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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

FILE:



Office:

VIENNA, AUSTRIA

Date:

SEP 19 2008

IN RE: Applicant:



APPLICATION:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge, Vienna, Austria, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Poland, was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission into the United States by fraud or willful misrepresentation. The applicant, therefore, seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). In addition, the applicant was 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 acting officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated February 15, 2005.

In support of the appeal, the applicant provides a completed Form I-290B, Notice of Appeal, and a letter from the applicant's spouse's physician, dated March 9, 2005. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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 states, in pertinent part, the following:

- (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 immigrant 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....

Section 212(a)(9) 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)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), the record establishes that the applicant misrepresented herself when attempting to enter the United States in June 2002; by presenting her nonimmigrant visa at the port of entry, the applicant was affirming that her intentions were to visit the United States for pleasure, when in fact, she provided a sworn statement to an immigration officer on June 26, 2002 that confirmed that she was attempting to enter the United States to work for a family and care for their child. The applicant is therefore inadmissible to the United States under section 212(a)(6)(C)(i) for attempting to enter the United States by fraud and/or willful misrepresentation.

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 in June 2000, with permission to remain until September 2000. However, she remained without authorization until December 2001. As the applicant had resided unlawfully in the United States for more than one year and then sought admission within ten years of her last departure, the officer in charge correctly found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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. 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.

The applicant first asserts that she is suffering extreme hardship due to her inadmissibility. As stated by previous counsel:

...Since her return to Poland in December 2001, [REDACTED] [the applicant] remains unemployed due to poor economic conditions in the rural area of Poland, where she resides and due to her medical condition....

.. [REDACTED] is suffering chronic anemia caused by gynecological problems. Due to personal situation of [REDACTED], lack of employment, no insurance and no finances, she is denied further treatment....

...Recently [REDACTED] developed depression caused by her hopples [sic] situation in Poland....

On the other hand [REDACTED] is enrolled in medical coverage program, as a family member, offered to [REDACTED] [the applicant's spouse] through his employment and medical treatment of her condition is immediately available to her....

Counsel's Brief, dated November 17, 2004.

Waivers of the bar to admission under section 212(i) of the Act resulting from a violation of section 212(a)(6)(C) of the Act, and waivers of the bar to admission under section 212(a)(9)(B)(v) of the Act resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act, are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and any hardship to the applicant cannot be considered, except as it may affect the applicant's spouse.

To begin, it has not been established that the applicant is unable to obtain gainful employment with adequate health care coverage in Poland. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Moreover, although the

applicant has provided documentation relating to her medical situation, the AAO is unable to determine the gravity of the situation, its short and long-term treatment plans, and what specific hardships she is encountering due to her husband's absence and by extension, how said hardships are impacting the applicant's spouse, the qualifying relative. Finally, no documentation regarding the medical costs for treating the applicant have been provided to establish that such costs are causing and/or will cause extreme financial hardship to the applicant's spouse. The AAO thus finds that it has not been established that the applicant's difficulty in obtaining employment in Poland with appropriate medical coverage to treat her medical conditions is causing the applicant's spouse extreme hardship.

The applicant further asserts that her U.S. citizen spouse will experience emotional and psychological hardship were the applicant unable to reside in the United States. As stated by the applicant's spouse's physician, the applicant's spouse is suffering from "...major depression-with impaired ability to manage his other medical problems..." *Letter from [REDACTED], Garfield Ridge Medical Center, dated March 9, 2005.*

With respect to the applicant's spouse's diagnosis of major depression, the letter provided by [REDACTED] does not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED]'s findings speculative and diminishing the letter's value to a determination of extreme hardship. Moreover, although [REDACTED] has determined that the applicant's spouse is experiencing major depression, the record does not contain any documentation from a licensed mental health professional that establishes the applicant's spouse's current mental health treatment, if any, its short and long-term treatment plans, and the gravity of the situation. In addition, it has not been established that the applicant's spouse's situation is extreme as he is able to maintain full-time gainful employment, as documented by the letter provided by [REDACTED] Senior Manager-Human Resources, JVC Americas Corp., dated November 11, 2004, confirming that the applicant's spouse has been employed with said facility since February 1989. Finally, it has not been established that the applicant's spouse is unable to continue traveling to Poland, his home country, on a regular basis, to visit with the applicant, as he has presumably been doing since their marriage in 2004.

The letter from [REDACTED] shows that the applicant has a very loving and devoted spouse who is extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), be above and beyond the normal, expected hardship involved in such cases.

further states that the applicant's spouse's medical depression is causing him financial hardship related to missed work days, and to the cost of antidepressant medications. *Id.* at 1. 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).

Neither the applicant and/or her spouse have provided statements, in their own words, detailing the financial hardships the applicant's spouse is facing due to his wife's inadmissibility. 's conclusion that the applicant's spouse is suffering financial hardship due to his mental health condition is not substantiated in any way by corroborating documentation from the applicant and/or her spouse. 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)).

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. In this case, the applicant has not asserted any reasons why her spouse, a native of Poland, is unable to reside with the applicant in Poland, or in any other country of their choosing, due to the applicant's inadmissibility.

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 spouse will face extreme hardship if the applicant is refused admission. The record demonstrates that he faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission. Although CIS is not insensitive to his situation, emotional hardship is a common result of separation and does not rise to the level of "extreme" as contemplated by statute and case law.

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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

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