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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services



FILE: [REDACTED] Office: VIENNA, AUSTRIA Date: **NOV 04 2004**

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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, Director  
Administrative Appeals Office

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prevent clearly unwarranted  
invasion of personal privacy

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Vienna, Austria. The matter 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 pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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 and seeking readmission within 10 years of his last departure from the United States. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with his wife and child.

The Officer in Charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. *Decision of the Acting District Director*, dated July 25, 2003.

On appeal, the applicant submits a statement written by his wife along with two untranslated documents in Polish. The applicant's wife states that she wishes the AAO to consider documentation not previously submitted. She also states that her health has degenerated due to the applicant's inability to return to the United States. *Form I-290B*, dated September 3, 2003.

On appeal, the applicant submits two documents written in Polish. There is a notation in English at the bottom of each document, apparently written by the applicant's wife. The notations, however, do not constitute translations of the documents. Regarding the requirement that documents be translated, 8 C.F.R. § 103.2(a)(3) states:

(3) Translations. Any document containing foreign language submitted to the Service [now the Citizenship and Immigration Services (CIS)] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Because the appeal does not include translations of the documents, the AAO is unable to consider them in making its determination. The applicant's wife's statement on appeal, however, as well as the rest of the documentation on the record was reviewed and considered in rendering a decision on the appeal.

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.

In the present application, the record indicates that the applicant entered the United States on a visitor visa on July 2, 1991 with authorization to remain until January 2, 1992. On November 4, 2000, the applicant married a U.S. citizen. The applicant remained in the United States until July 2, 2001. On January 16, 2003, the applicant's wife filed a Petition for Alien Relative (Form I-130) at the U.S. consulate in Warsaw, Poland. The AAO notes that the applicant overstayed the period of stay authorized by his visitor visa by remaining in the United States for over ten years. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act. The applicant is seeking admission within ten years of his July 2001 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(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 or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. 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).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

The applicant's U.S. citizen wife was born in Poland and returned there in 2001 to live with the applicant. She gave birth to a U.S. citizen child while in Poland. She claims that she will face extreme hardship if she remains in Poland due to the weak economy in that country. She asserts that she and the applicant are both currently unemployed and are forced to exhaust their life savings. There is no documentation on the record regarding the applicant's or his wife's current financial and employment status in Poland. The AAO notes

that the U.S. 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).

The applicant's wife also states that the stress caused by their economic situation along with the insecurity regarding future family unity has caused her to require psychiatric care. There is no documentation in English on the record that supports this claim. The applicant's wife further asserts that, should she return to the United States without the applicant, she will suffer emotional distress due to their separation. Nevertheless, the applicant's wife states that her psychiatrist recommended that she return to the United States, as proximity to her parents might have a beneficial effect on her emotional state. Moreover, the record reflects that the applicant's wife's parents filed an Affidavit of Support (Form I-864) on behalf of the applicant, indicating that they would be able to assist their daughter (the applicant's wife) and her child upon her return to the United States. The record also shows that the applicant's wife was previously employed in the United States, and there is no evidence that she is unable to produce income through her own employment.

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 being deported. The AAO recognizes that the applicant's wife would endure hardship as a result of separation from the applicant. However, her situation, if she returns in the United States, is typical to individuals separated as a result of deportation or exclusion 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 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)(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.