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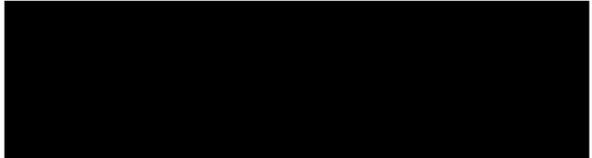
U.S. Department of Homeland Security  
20 Massachusetts Ave. N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE:

Office: CHICAGO, IL

Date: NOV 30 2007

IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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 District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native of Poland and a citizen of Canada since 1995, was found inadmissible to the United States under 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. He 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), in order to be able to reside in the United States with his U.S. citizen spouse.

The district 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 Excludability (Form I-601) accordingly. *Decision of the District Director*, dated June 16, 2005.

The following documents were submitted in support of the appeal: a brief from the applicant's representative, dated July 18, 2005; an affidavit from the applicant's spouse, a naturalized U.S. citizen, dated July 14, 2005; and a letter from [redacted] regarding the applicant's spouse's medical conditions, dated June 27, 2005. The entire record was reviewed and considered in rendering this decision.

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...

Regarding the applicant's ground of inadmissibility, the record reflects that the applicant submitted an application for asylum on September 1, 1987. On July 27, 1990, the application for asylum was denied. The applicant was ordered deported on January 16, 1992. The record indicates that he departed on his own on January 26, 1992. Pursuant to sworn testimony given by the applicant at his I-485, Adjustment of Status interview on August 10, 2004, he admitted to numerous entries to the United States, in 1995 and 2002-2004, and residence in the United States from January 1996 until April 2002 and for periods from 2002 until the present. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until his departure in April 2002. As the applicant resided unlawfully in the United States for more than one year and has sought admission within ten years after removal, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of 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 citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences is irrelevant to section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is hardship suffered by 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 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 United States 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.

Counsel first contends that the applicant's spouse would suffer extreme hardship were the applicant removed due to the applicant's spouse's advanced age, her medical conditions, and her emotional ties to her adult daughter, a naturalized U.S. citizen. The record indicates that the applicant's spouse, at the time the appeal was filed, was over 52 years old and had been diagnosed with hypertension, diabetes melitons and osteoporosis. As the applicant's spouse states, "...I am currently being treated under the care of Barbara Sasik, M.D. concerning hypertension, Diabetes Melitons and Osteoporosis. I take the following medicine on a daily basis: Avalide for hypertension...Melformin, test strips and lancets...Fosamax for Osteoporosis...Cenestin for Menopause...and Prometriu...the monthly total is \$373.85 per month for prescription...If my husband returns to Canada the monthly cost of my medicine would no longer be paid by my husband and I have no immediate source of funds. My illness could cause further deterioration of my health..." *Affidavit from* [REDACTED] dated July 14, 2005.

Counsel provides no documentation from a medical professional outlining the applicant's spouse's short and long-term treatment plan, the gravity of her medical conditions, and what specific assistance the applicant's spouse needs from the applicant. Counsel also does not explain why the applicant's adult daughter would be unable to assist the applicant's spouse, financially and physically, should the applicant's spouse's condition worsen after the applicant's removal. Moreover, no evidence has been provided to substantiate that the applicant is unable to obtain gainful employment in Canada, thereby providing him with the ability to assist his spouse with respect to household and medical costs while she remains in the United States. Counsel has also failed to explain why the applicant's spouse would be unable to visit the applicant on a regular basis, due to the close proximity between Canada and the United States. Finally, it has not been documented that the applicant's spouse is unable to obtain employment providing affordable health care coverage were she to remain in the United States. While the applicant's spouse may need to make alternate arrangements for her financial, medical and emotional care due to the applicant's absence, it has not been established that such alternate arrangements would cause her extreme hardship.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal 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 notes that extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. In this case, it has not been established that the applicant's spouse would encounter extreme hardship were she to relocate to Canada to reside with the applicant. To begin, no evidence has been provided that outlines the costs of the applicant's spouse's medical treatment were she to relocate to Canada and establishes that such costs would be prohibitive to the applicant and his spouse, thereby causing hardship with respect to the applicant's spouse's health and welfare. Moreover, it has not been established that the applicant would be unable to obtain gainful employment in Canada, thereby providing financial support and health care coverage to the applicant's spouse. In addition, there is no evidence that details that the applicant's spouse would be unable to visit her adult daughter in the United States on a regular basis, or in the alternative, that the applicant's spouse's adult daughter would be unable to visit her mother in Canada on a regular basis, ensuring the continued familial connection between mother and daughter. 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 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 removed from the United States. The record demonstrates that she faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Although CIS is not insensitive to her situation, the financial strain and emotional hardship she would face are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were not allowed to reside in the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility 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.