

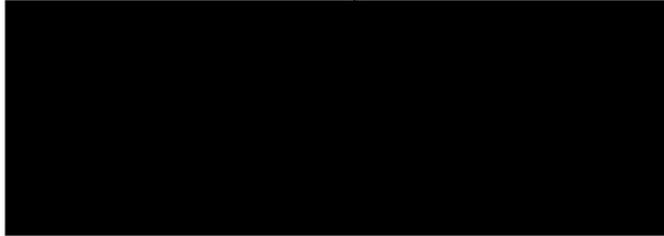
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



H3

FILE: [REDACTED]

Office: FRANKFURT, GERMANY

Date: APR 29 2008

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:



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, Frankfurt, Germany. 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 ten years of his last departure from the United States. The applicant is the fiancée of a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse as a result of his inadmissibility to the United States. The application was denied accordingly. *Decision of the Officer-in-Charge*, dated January 23, 2006.

On appeal, the applicant states that since the denial of his waiver application his fiancée has been devastated. He states that she has lost her mind and does not know how to survive without him. He asserts that they have been together since 1992 and that he is like a father to his fiancée's son. He requests that his waiver application be reconsidered. *Letter from Applicant*, undated.

The record indicates that the applicant entered the United States in October 1989 on a B-2 visitor's visa, with an authorized stay until April 1990. The applicant then applied for political asylum, but withdrew his application and was granted voluntary departure on September 30, 1998 by an Immigration Judge. The Immigration Judge granted the applicant voluntary departure until September 30, 1999. The applicant was then granted an extension of his voluntary departure until December 1, 1999. *Notice of Action*, dated November 15, 1999. The applicant remained in the United States until June 23, 2003. Therefore, the applicant accrued unlawful presence from when he was required to depart the United States under his grant of voluntary departure on December 1, 1999 until June 23, 2003, the date he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of his June 23, 2003 departure from the United States. Therefore, the applicant is 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.

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.

If an alien seeking a K nonimmigrant visa is inadmissible, the alien's ability to seek a waiver of inadmissibility is governed by 8 C.F.R. § 212.7(a), which provides, in pertinent part:

(a) *General*—(1) *Filing procedure*—(i) *Immigrant visa or K nonimmigrant visa applicant*. An applicant for an immigrant visa or “K” nonimmigrant visa who is inadmissible and seeks a waiver of inadmissibility shall file an application on Form I-601 at the consular office considering the visa application. Upon determining that the alien is admissible except for the grounds for which a waiver is sought, the consular officer shall transmit the Form I-601 to the Service for decision.

In determining that a fiancé(e) is equivalent to a spouse for the purposes of the extreme hardship statute, the AAO relies on 22 C.F.R. § 41.81 which provides:

§ 41.81 Fiancé(e) or spouse of a U.S. citizen and derivative children.

(a) Fiancé(e). An alien is classifiable as a nonimmigrant fiancé(e) under INA 101(a)(15)(K)(i) when all of the following requirements are met:

(4) The alien otherwise has met all applicable requirements in order to receive a nonimmigrant visa, *including the requirements of paragraph (d) of this section*.

(d) *Eligibility as an immigrant required*. The consular officer, insofar as is practicable, must determine the eligibility of an alien to receive a nonimmigrant visa under paragraphs (a), (b) or (c) of this section *as if the alien were an applicant for an immigrant visa*, except that the alien must be exempt from the

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 and/or parent of the applicant. Hardship the applicant experiences due to separation is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent. 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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

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.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The AAO notes that extreme hardship to the applicant's fiancée must be established in the event that she resides in Poland or in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The first part of the analysis requires the applicant to establish extreme hardship to his fiancée in the event that she resides in Poland. Counsel states that the applicant's fiancée is elderly and would not re-adjust well to life in Poland as she has not traveled to Poland since she left in 1983. *Counsel's Brief*, undated. Counsel states that the applicant's fiancée has been diagnosed with hypertension and would not be able to find adequate health care in Poland. *Id.* The record includes a medical note from the applicant's fiancée's son, Dr. [REDACTED]. Dr. [REDACTED] states that since the applicant's departure he has noticed his mother's health deteriorating. *Letter from [REDACTED]*, undated. He states that she has been depressed, her appetite has declined, she cannot sleep and she is always gloomy. He also states that she suffers from hypertension and has a strong family history of heart disease. *Id.* Counsel submits a definition of hypertension and its health risks from the National Institutes of Health, which states that hypertension is the medical term for high blood pressure, increases the risk of heart disease and stroke, and can also result in other conditions, such as, congestive heart failure, kidney disease and blindness. Counsel states that the applicant's fiancée is currently

able to function, but relocating to Poland could precipitate severe changes in her health. *Counsel's Brief*, undated. Counsel submits an article published in 2004 in the *Croatian Medical Journal*, entitled, "Survey of Health Status and Quality of Life of the Elderly in Poland and Croatia," which states that during the transition from communism to democracy the elderly in Poland were neglected and now poor health and quality of life pose a "considerable task for public health bodies in Poland to equal the standards of the European Union." The article states that, in comparison with highly developed countries, the elderly in Poland suffer on average from a higher number of chronic conditions, perceive more bodily pain and report worse physical and mental health. Counsel also submits a report from the British Broadcasting News Service, dated January 31, 2002, commenting on a Polish health care scandal. This report states that the Polish people have lost all faith in their doctors and question whether calling an ambulance will be risking their lives. Another article submitted by counsel states that there are long waits for operations and it is common for patients to pay bribes for faster care. *Zurich in North America*, dated March 3, 2005. This article also states hospitals are rundown and patients are often forced to bring their own soap and toilet paper for stays in crowded rooms on small rickety cots. *Id.* Counsel asserts that due to the current healthcare situation in Poland it is impossible to imagine that that the applicant's fiancée would be able to successfully access adequate treatment, which would result in the deterioration of her condition. Counsel also emphasizes a report published by the Buehler Center on Aging at the McGraw Medical Center of Northwestern University, Chicago, Illinois. This report found that Polish-American elderly living in the United States view their quality life as significantly better than elderly Poles living in Poland. The record also includes a 2005 Consular Information Sheet for Poland, which states that there is a high rate of crime in major cities in Poland and that although there is adequate medical care available in Poland, hospital facilities and nursing support are not comparable to American standards.

The AAO notes that the record fails to establish the extent of the applicant's fiancée's health problems. A letter from the applicant's son stating that she suffers from high blood pressure is not sufficient for the purposes of establishing her medical condition. The record does not include any medical evidence that demonstrates that the applicant's fiancée suffers from high blood pressure and/or the course of treatment, if any, she is currently undergoing to control this condition. As the record does not establish the severity of the applicant's fiancée's medical condition, it is not clear as to what type of treatment she would require upon relocation or that she would require any medical treatment. Thus, the AAO is not able to make a determination as to whether her health would cause her extreme hardship upon relocation to Poland. However, the record does establish that any health care she did receive as an elderly women living in Poland would not equal the care she would receive in the United States.

Counsel states further that the applicant's fiancée would experience financial difficulties were she to relocate to Poland because she would be responsible for paying for her health care and living expenses out of her limited retirement funds. Counsel states that the applicant's fiancée receives social security in the amount of \$4,920 per year and at her advanced age would not be able to find employment in Poland. *Counsel's Brief*, undated; Social Security Administration 2005 Benefits Notice, undated. The AAO notes that although the applicant's fiancée's statement indicates that the applicant is unemployed, the record does not contain information regarding his financial situation in Poland or his ability to find employment in Poland. The AAO also notes that the record does not establish that the applicant's fiancée's only source of income is her social security benefit.

Counsel also states that the applicant's fiancée has a U.S. citizen son who has been her only close family member for 14 years and to leave her son and her community would exacerbate her health problems. *Id.* He also states that the applicant's fiancée and her son are incredibly dependant on one another, they speak on the phone daily and visit each other on a regular basis. The applicant's fiancée's son states that his mother is very important to him, that she is his best friend and strongest supporter. *Letter from [REDACTED]*, undated. He states that he enjoys talking to her a daily basis, she is his foundation and an indispensable part of his life. He states that he will be getting married next year and that he wants his mother to be close for his wedding and when he starts a family. *Id.* The applicant's fiancée states that she moved from Poland 22 years ago with her only son and that she cannot imagine being away from him. *Fiancée's Statement*, undated. She states that she has devoted her life to taking care of him and in 2006 he will be getting married. She states that she will suffer from being thousands of miles away from him. *Id.* The record also includes letters from [REDACTED] a and [REDACTED], close friends of the applicant's fiancée. Both women state that the applicant's fiancée is a close friend and an active member of her community and church.

The AAO does not find the current record to establish that the applicant's fiancée would suffer extreme hardship upon relocating to Poland. The record does not provide sufficient evidence to determine that the applicant's fiancée's health problems and/or her financial situation would result in extreme hardship if she joined the applicant in Poland. Neither does the record offer evidence to demonstrate that the applicant's spouse's separation from her son would result in severe emotional hardship.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his fiancée remains in the United States. Counsel states that applicant's fiancée would suffer extreme hardship as a result of being separated from the applicant for the next ten years. *Counsel's Brief*, undated. He states that the applicant and his fiancée have known each other for over ten years and that they are committed to one another. *Id.*

In his statement, the applicant asserts that since his fiancée learned of his waiver denial she has been devastated. *Applicant's Statement*, undated. He states that she calls him everyday, has lost her mind and will not be able to survive without him. He states that they have been together since 1992, she is now sixty-four years old and that he is like a father to her son [REDACTED]. *Id.* The applicant's fiancée's son states that when his mother is with the applicant she seems very happy and that is they were able to reunite her life would be much easier and she would be much happier. *Letter from [REDACTED]*, undated. The record also includes letters from [REDACTED] and [REDACTED] friends of the applicant's fiancée. These letters states that since the applicant's departure from the United States his fiancée has been very depressed and emotionally devastated. *Letters from [REDACTED]* dated April 8, 2005 and *Letter from [REDACTED]*, dated April 7, 2005. The AAO notes that the record does not contain any documentary evidence to support the applicant's claims concerning his fiancée's mental health. 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 finds that although the applicant's fiancée may be experiencing hardship as a result of being separated from the applicant, this hardship does not rise to the level of extreme but reflects the type of hardship commonly experienced as a result of the removal of a family member.

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's fiancée 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.