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

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FILE:

Office: ST. PAUL, MN

Date:

FEB 27 2008

IN RE:

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.

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 Field Office Director, St. Paul, Minnesota. 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 married to a U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States.

The field office director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse and the application was denied accordingly. *See Decision of the Field Office Director*, dated March 15, 2007.

On appeal, the applicant asserts that he will be leaving his family with a heavy financial burden and that separation would take an emotional toll on his family. *Form I-290B*, received April 16, 2007.

The record includes, but is not limited to, the applicant's spouse's cover letter, the applicant's spouse's statement, the applicant's spouse's chiropractor's statement, a motor vehicle lease agreement, a credit card statement and documents for the applicant's son. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States on a visitor's visa on October 3, 1997, his visitor status expired on April 2, 1998, and he departed the United States on or about November 19, 2003. The applicant accrued unlawful presence from April 2, 1998, the date his authorized period of stay expired, until November 19, 2003, the date he departed 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 and seeking readmission within ten years of his 2003 departure.

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.

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 to non-qualifying relatives, such as the applicant's son, is not a permissible consideration except to the extent that such hardship may affect the qualifying relative. 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 Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. Extreme hardship to the applicant's spouse must be established in the event that she relocates to Poland and in the event that she remains 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 first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she relocates to Poland. The record reflects that the applicant's spouse is 77 years old and became a U.S. citizen through naturalization on June 3, 1957. *Applicant's Spouse's Certificate of Naturalization; Form I-130*, received December 7, 2005. In regard to family ties in Poland, the record reflects that the applicant's spouse has two sisters residing in Poland. *I-130 Interview Notes*, undated. In regard to significant conditions of health, the record reflects that the applicant's spouse has been a patient at the Ford Chiropractic Clinic for at least twenty years, she has been treated for chronic degenerative spinal stenosis which is continuing to degenerate, her physical activities are severely limited, and she suffers from degenerative joint and disc disease throughout the cervical and thoracic spine. *Letter from [REDACTED] D.C.*, dated April 6, 2007. However, the record does not include any statements from the applicant's spouse that she cannot reside in Poland. Based on the record presented, the AAO finds that the applicant has not established that his spouse would experience extreme hardship upon relocating to Poland.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. The applicant's spouse states that it would be extremely hard on her

physically and emotionally if the applicant left. *Statement of the Applicant's Spouse*, dated April 5, 2007. The applicant's spouse's chiropractor states that with the severe restrictions places on the applicant's spouse due to her condition, it is important that she have additional support and help at home. *Letter from [REDACTED]* D.C. He indicates that without this help, the applicant's spouse will require assisted living in the near future. *Id.* However, the chiropractor does not specifically mention the applicant in his letter. The record does not include evidence of the specific support that the applicant provides and that the applicant's spouse's two adult children cannot provide this support. The record reflects that the applicant's spouse's two adult children reside with her. *Applicant's Form I-485*, at 1, received December 7, 2005.

The applicant's spouse states that she and the applicant have taken several car and home loans, they have bills to pay for their son, it is impossible for her to fulfill their payments on a retired person's income and she will not be able to work because of her severe physical condition. *Applicant's Spouse's Cover Letter*, dated April 11, 2007. The applicant's spouse states that she receives income from three duplexes, it is hard for her to upkeep the apartments, and her spouse helps with remodeling, snow removal, lawn upkeep and repairs. *Statement of the Applicant's Spouse*. The record does not include evidence that the applicant's spouse owns three duplexes and that the applicant assists with their upkeep, neither does it document the level of retirement income received by the applicant's spouse. The record includes a business credit card approval letter to the applicant's spouse for a publishing company. *Advanta Credit Card, [REDACTED]*, dated February 23, 2007. The record is not clear as to the applicant's spouse's financial state, the financial support that the applicant provides and the financial effect on the applicant's spouse should she be separated from the applicant.

The AAO finds that the record provides insufficient evidence to establish extreme hardship in the event that the applicant's spouse remains in the United States.

U.S. court decisions have additionally 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that a qualifying relative would suffer extreme hardship. 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(h) 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.