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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: [REDACTED] Office: VIENNA, AUSTRIA

Date: SEP 16 2008

IN RE: Applicant: [REDACTED]

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.

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 Acting Officer in Charge, Vienna, Austria, and 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 procured entry into the United States with a valid K-1, Fiancée Visa, in October 1997. Pursuant to K-1 regulations, the applicant was required to marry the petitioner of the Form I-129F, Petition for Alien Fiancée, within 90 days of entry. The applicant did not marry the petitioner, nor did she request an extension of stay. In November 2001, the applicant voluntarily departed the United States. The applicant accrued unlawful presence from the expiration of her K-1 visa until her departure in November 2001. The applicant 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. The applicant seeks a waiver of inadmissibility in order to reside with her naturalized U.S. citizen spouse in the United States.

The acting officer in charge 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 Acting Officer in Charge*, dated September 9, 2005.

In support of the appeal, counsel for the applicant submits the Form I-290B, Notice of Appeal; a letter from the applicant's spouse's physician, dated October 1, 2005; and a statement from the applicant's U.S. citizen spouse, dated October 3, 2005. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) of the Act provides, in pertinent part:

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...

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant or their U.S. citizen child, who currently resides with the applicant in Poland, cannot be considered, except as it may affect the applicant's spouse.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

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 applicant's spouse asserts that he is experiencing emotional and physical hardship due to the applicant's spouse's inadmissibility. As stated by the applicant's spouse,

...Without her [the applicant], I became progressively more despondent and anxious. I developed high blood pressure. I am currently under a doctor's care for these acute conditions....

Letter from [REDACTED] dated June 4, 2005.

In support of the applicant's spouse's statements, a letter has been provided by [REDACTED] applicant's spouse's treating physician: [REDACTED] states as follows:

...This is to certify that patient [REDACTED] has been under my care for hypertension, which is becoming increasingly harder to control, as well as for depression, which has shown signs of deepening. [REDACTED] diastolic blood pressure is increasing steadily into dangerous territory, despite medications. There has been two occasions when [REDACTED] came to the office in a state of anxiety over his marital situation when his blood pressure was 230/120, or worse. He was talking of suicide and had to be given tranquilizing medications. He stayed in the office for two hours until I was satisfied that he was no longer a danger to himself or others....

*Letter from [REDACTED] Medical Center, dated October 1, 2005.*

The letter provided by [REDACTED] does not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby diminishing the letter's value to a determination of extreme hardship. Moreover, although [REDACTED] references that the applicant's spouse has been diagnosed with depression and has had suicidal ideations, he makes no recommendations for the applicant's spouse's continued care, such as regular therapy sessions or other treatment, and/or medications, to further support the gravity of the situation. In addition, it has not been established that the applicant's spouse's situation is extreme as he has been able to maintain gainful employment, since January 1996, in the United States as a varnisher, as documented by his executed Form G-325A, Biographic Information. Finally, it has not been established that the applicant's spouse is unable to travel to Poland, his home country, on a regular basis to visit the applicant and their child.

The record establishes that the applicant has a very loving and devoted spouse who is extremely concerned about the prospect of the applicant's inability to reside in 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 section 212 (a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation if he 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 relocates abroad to reside with the applicant based on the denial of the applicant's waiver request. In this case, the applicant's spouse references the following hardships:

...I would make...about \$300 per month if I could find a job as a varnisher in Poland. It is not feasible that I, a U.S. citizen, should move to Poland for seven to ten years. I have been here for fifteen years and all my own blood relatives live here, for the most part, including two sisters and a brother.... if I moved to Poland I would not be able to provide for my wife and child....

Letter from [REDACTED] dated October 3, 2005.

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."); *Shooshtary 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).

To begin, no documentation regarding the applicant and her spouse's financial situation, including current income and expenses, has been provided to establish that a relocation abroad would cause the applicant's spouse extreme financial hardship. Moreover, it has not been objectively documented that the applicant's spouse, a varnisher, would not be able to find a similar position, with comparable pay, in Poland, his birth country, thereby providing the financial support that the applicant's spouse and his family require. Finally, no evidence has been provided that explains why the applicant is unable to obtain employment in Poland, thereby assisting the applicant's spouse with respect to the household finances. 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)).

With respect to the applicant's spouse's claims of emotional hardship were he to leave his extended family, no evidence has been provided that establishes the applicant's spouse's current level of contact with his sisters and brother. Moreover, it has not been established that the applicant's spouse's siblings would be unable to visit the applicant's spouse in Poland on a consistent basis. Finally, nothing prohibits the applicant's spouse from returning to the United States on a regular basis to visit his extended family. While the AAO understands that the applicant's spouse may need to make alternate arrangements with respect to his employment and his continued contacts with his extended family, it has not been established that such arrangements would cause extreme hardship to the applicant's spouse.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship if she were unable 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. The waiver application is denied.