

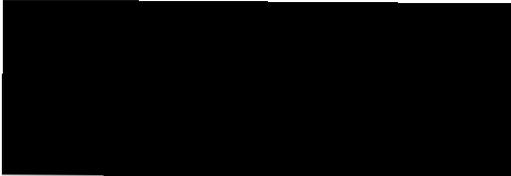
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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: FRANKFURT, GERMANY Date: **APR 24 2008**

IN RE: [Redacted]

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

ON BEHALF OF PETITIONER:

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Frankfurt, Germany, 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 was found to be 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)(i)(II), for having been unlawfully present in the United States for one year or more. The applicant is married to a Lawful Permanent Resident and is the beneficiary of an approved Petition for Alien Relative filed on his behalf by his U.S. Citizen daughter. The applicant initially entered the United States without inspection on or about June 7, 1998 and remained until April 2005, when he traveled to Poland to apply for an immigrant visa. The applicant 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 return to the United States and reside with his spouse.

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly.

On appeal, the applicant asserts that denial of the waiver would result in extreme hardship to his wife. Specifically, he states that it would constitute emotional hardship for his wife to be separated from him after 42 years of marriage. The applicant further asserts that it would constitute extreme hardship for his wife to relocate to Poland because she suffers from multiple sclerosis and will not have access to the medical care she needs in Poland. He further asserts that relocating to Poland would result in economic hardship and a decline in standard of living for his wife, who has resided in the United States with their daughter and her family since 1993. In support of the appeal, the applicant submitted an additional statement describing these hardships.

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

- (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 Secretary, 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.

The AAO notes that the record contains several references to the hardship that the applicant's U.S. Citizen daughter would suffer if he is denied admission and she relocates to Poland. Section 212(a)(9)(B)(v) of the

Act provides that a waiver of 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. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's daughter will not be separately considered, except as it may affect the applicant's spouse.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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. These factors included 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.

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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Hassan v. INS*, *supra*, the court further held 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. 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.

The record reflects that the applicant is a 66 year-old native and citizen of Poland who resided in the United States from June 1998 to April 2005. The record further reflects that the applicant's wife is a 61 year-old native and citizen of Poland. She is a Lawful Permanent Resident who currently resides in Garfield, New Jersey.

The applicant claims that if he is refused admission to the United States, their continued separation will result in extreme hardship to his wife. In support of the waiver application he submitted a letter from his wife describing the delays in processing their daughter's naturalization application, which caused them to miss the filing deadline for the applicant to adjust his status under section 245(i) of the Act, 8 U.S.C. § 1255(i). The letter states the applicant "came to the United States and sacrificed everything to keep his marriage intact and to be with [his wife] and [his] family." The letter further states that the applicant has no job or apartment in Poland and that he and his wife need each other very much. See letter from [REDACTED] dated August 19, 2005. A letter from the applicant's daughter also describes in detail the delays in her naturalization application that prevented her father from qualifying for adjustment of status under section 245(i) of the Act.

The letter does not describe any hardship to her mother and only states that the family has been very happy living together. It further states that she and her husband have bought a house and “found financial security for [their] family.” See letter from [REDACTED] dated February 24, 2005. There is no evidence that any emotional hardship the applicant’s wife may be experiencing from being separated from her husband is greater than the type of hardship normally to be expected when a family member is excluded or deported. See *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship).

In addition, the applicant submitted a declaration with the appeal stating that his family members cannot relocate to Poland because he has “neither suitable financial and substantial means to support them nor any possibilities to find employment for them in Poland.” See letter from [REDACTED] dated February 2006. The letter further states that their standard of living would deteriorate considerably and that his wife, who is 61 years old and suffers from multiple sclerosis and locomotive and anxiety disorders, requires highly specialized medical care, which is not available in Poland. It states that if the applicant is able to rejoin his family in the United States, he will be able to “provide help and assistance to [his] wife, as well as to settle other matters connected with her medical treatment and support.” Another letter submitted by the applicant states that he and his wife are over 60 years old and have been married for 42 years and that he “would not like to allow [the] break-up of the marriage due to the distance between [them].” It states that his wife’s health may deteriorate at any time and that she is emotionally attached to the United States where their grandchildren were born and where she and their daughter have their “home, social and career lives.” See letter from [REDACTED] submitted February 2007.

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, are relevant factors in establishing extreme hardship. There is, however, no medical evidence on the record to establish that the applicant’s wife is suffering from multiple sclerosis or an anxiety disorder, or that treatment for her conditions would not be available in Poland. Absent specific evidence, such as a letter from the qualifying relative’s physician describing the exact nature of the medical condition and any current treatment being received and future treatment needed, the AAO is not in a position to determine whether a significant health condition exists. Further, the evidence would need to establish that suitable medical care would not be available in Poland. There is also no evidence on the record concerning the financial situation of the applicant or his family members in the United States or of economic conditions in Poland. Without this evidence the AAO cannot determine whether the financial impact of departure of the applicant’s wife from the United States would be more severe than that normally experienced as a result of deportation or exclusion. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), *supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant also states that the applicant’s wife suffers from an anxiety disorder, but there is no documentary evidence that she has been diagnosed with this condition or that it is caused or exacerbated by her separation from the applicant. There is no evidence to establish that the emotional effects of being separated from the applicant are more serious than the type of hardship a family member would normally suffer when faced with her spouse’s deportation or exclusion. Although the depth of her distress over the prospect of being separated from her spouse is not in question, a waiver of inadmissibility is only available

where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 familial and emotional bonds exist.

Based on the evidence on the record, the emotional and financial difficulties that the applicant’s wife would suffer appear to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. 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). In addition, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. The court in *Hassan v. INS*, *supra*, further held 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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his Lawful Permanent Resident spouse as required under section 212(a)(9)(B)(v) of the Act.

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.