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

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FILE: [redacted] Office: VIENNA, AUSTRIA Date:

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Assistant 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 was found to be inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a benefit under the Act by fraud or misrepresentation. The applicant is the beneficiary of an approved petition for alien relative filed by his U.S. citizen mother. He seeks a waiver under § 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The district director concluded that the applicant had failed to establish extreme hardship to his U.S. citizen mother, and denied the application accordingly. On appeal, the applicant disputes the assistant officer in charge's determination that he obtained nonimmigrant visas to enter the United States when, in fact, the applicant was living and working in this country. The applicant submits a statement of his own and a statement written by his mother accompanied by several untranslated documents in Polish. The AAO does not find that this evidence overcomes the assistant officer in charge's reasons for denial.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.
>
> (2) No court shall have jurisdiction to review a decision or action of the Attorney General regarding a waiver under paragraph (1).

Congress' desire in recent years to limit, rather than extend the relief available to aliens who have committed fraud or misrepresentation is clear. In 1986, Congress expanded the reach of the grounds of inadmissibility in the Immigration Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, and redesignated as § 212(a)(6)(C) of the Act by the Immigration Act of 1990 (Pub. L. No. 101-649, Nov. 29, 1990, 104 Stat. 5067). The Act of 1990 imposed a statutory bar on those who make oral or written misrepresentations in seeking admission into the United States and on those who make material misrepresentations in seeking admission into the United States or in seeking "other benefits" provided under the Act.

In this case, the evidence on the record indicates that the applicant attempted to enter the United States on February 27, 1998 using a nonimmigrant visitor visa, when, in fact, he was an intending immigrant. The

evidence indicates that the applicant was admitted as a temporary visitor on several occasions in the 1990s, although it appears that he was actually living and working in the United States. The applicant writes in his statement that in 1981 he and his family acquired the status of "political immigrants" in the United States, and he obtained a "green card"; however, Citizenship and Immigration Services (CIS) has no record of his having obtained any permant status. Moreover, CIS records show that the applicant's application for asylum was denied. The applicant is thus inadmissible under § 212(a)(6)(C) of the Act.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from § 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Although extreme hardship is a requirement for § 212(i) relief, once established, it is but one favorable discretionary factor to be considered. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996). For example, *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 568-69 (BIA 1999) held that the underlying fraud or misrepresentation may be considered as an adverse factor in adjudicating a § 212(i) waiver application in the exercise of discretion.

In *Cervantes-Gonzalez, supra,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship pursuant to § 212(i) of the Act. These 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; significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *See Cervantes-Gonzalez* at 565-566.

In this case, the applicant's qualifying relative is his U.S. citizen mother. In her statement on appeal, the applicant's mother asserts that, due to her age, she is not in good health, and she desires the applicant to care for her in the United States and to be allowed to visit her grave when she passes away. The applicant's mother states that she broke her hip while in Poland, and she attaches several documents written in Polish. Unfortunately, the documents are not translated and cannot be considered for the record. Nevertheless, the applicant's and his mother's statements do not reveal that the applicant's mother requires the applicant's presence in order to carry out her daily activities. It does not appear from the record that the applicant's mother is incapable of caring for herself or that the applicant is the only individual available to assist her.

The AAO recognizes that the applicant's mother will suffer some type of hardship on account of the applicant's inadmissibility, but the record does not establish that her situation will be extreme when compared to that of similarly situated persons. 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 § 212(i) 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.