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

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[redacted]

FILE: [redacted] Office: CHICAGO, IL Date: DEC 05 2005

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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.

Ellen C. Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having falsely claimed to be a United States citizen on May 18, 1990. On August 10, 1990, the applicant was ordered removed from the United States. The applicant is married to a lawful permanent resident of the United States and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her spouse and U.S. citizen children.

The district director 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 District Director*, dated August 9, 2004.

On appeal, counsel states that the applicant has established extreme hardship to her lawful permanent resident spouse and merits the discretion of the Attorney General [now Secretary of Homeland Security]. *Form I-290B*, dated September 1, 2004. In support of these assertions, counsel submits a brief; a copy of the statement of the applicant regarding her false claim to United States citizenship; copies of documents relating to the business owned by the applicant and her spouse; letters of support from family members of the applicant; an affidavit of the applicant's spouse, dated January 27, 2003; copies of the United States birth certificates for the applicant's children and country condition reports for Poland. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (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.
>
> (ii) Falsely claiming citizenship. –
>
> (I) In General –
>
> Any alien who falsely represents, or has falsely represented, himself or herself to be a citizen of the United States for any purpose or benefit under this Act . . . is inadmissible.
>
> . . . .
>
> (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], 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 [Secretary] 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.

The record reflects that on May 18, 1990, the applicant claimed to be a citizen of the United States to immigration officials in an attempt to procure admission into the United States. The applicant was subsequently removed from the United States as a result of her false claim to citizenship.

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) affords aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver, but do not additionally afford them consideration of their waiver application under the standard applied before September 30, 1996.

> In considering a case where a false claim to U.S. citizenship has been made, Service [Citizenship and Immigration Services] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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 pursuant to section 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; 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.

Counsel contends that the applicant's spouse would endure hardship as a result of relocating to Poland to remain with the applicant. The applicant's spouse states that he earns $120,000 per year and would be unable to obtain a position in Poland equivalent to the one he maintains in the United States. *Affidavit of Bogdan Mikuta*, dated January 27, 2003. He indicates that he and the applicant have no family remaining in Poland and therefore would lack a support network if they returned to their native country. *Id.* at 2. The applicant's spouse contends that he and his children would suffer as a result of being separated from their relatives in the United States. *Id.* Counsel asserts that the applicant's spouse has spent his entire adult life in the United States. *Motion to Reopen and Reconsider*, undated. Counsel indicates that the applicant and her spouse began a new construction business in November 2003 and abandoning it would cause them financial hardship. *Id.* at 3. In addition, counsel provides country condition reports for Poland to support her contention that the applicant's spouse would have only a small chance of finding employment in Poland. *Id.* at 5 ("The CIA World Fact book lists Poland's unemployment rate at 18% and 18.4% of its population lives below poverty level.")

The record fails to demonstrate extreme hardship imposed on the applicant's spouse if he remains in the United States in order to maintain his successful career and investment in his business as well as proximity to family members. The applicant's spouse contends that owing to his demanding work schedule, he relies on the applicant to provide care for their children. *Affidavit of Bogdan Mikuta* at 2. He claims that he would be unable to handle his job, the household duties and care for the children simultaneously. *Id.* Counsel asserts that, in the absence of the applicant, the applicant's spouse will need to pay for childcare and maintain a separate household in Poland for the applicant. *Motion to Reopen and Reconsider* at 3. Although increased expenses experienced by the applicant's spouse as a result of the applicant's inadmissibility are regrettable, additional expenses standing alone do not form the basis for a finding of extreme hardship. While the AAO acknowledges counsel's assertion that the applicant will be unable to find employment in Poland, the claim is based on generalized statistics and does not establish that the applicant, particularly, will be unable to secure employment in order to contribute to her subsistence from a location outside of the United States. *Id.* at 5 (quoting *United States Department of State, Poland, Country Reports on Human Rights Practices – 2003*). Moreover, the record exhaustively establishes that the applicant's spouse possesses an extensive network of relatives who are entrenched in one another's lives and who offer assistance to one another on a regular basis. *See Letter from Wladyslaw Rutkowski and Michalina Rutkowski*, dated August 26, 2004. *See also Letter from Andrzej W. Mogielnicki and Agnieszka Mogielnicki*, dated August 18, 2004. *See also Letter from Leszek Mogielnicki and Alicja Mogielnicki*, dated August 16, 2004.

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. The AAO recognizes that the applicant's spouse would 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 deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.