U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

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U.S. Citizenship and Immigration Services

**PUBLIC COPY**

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[redacted]

FILE: [redacted] Office: VIENNA, AUSTRIA Date: OCT 27 2005

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under §§ 212(i) and 212(a)(9)(B) of the Immigration and Nationality Act (INA), 8 U.S.C. §§ 1182(i) and 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.

Ellen C. Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by the Officer in Charge, Vienna, Austria. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Poland. The applicant is married to a U.S. citizen and is the beneficiary of a petition for alien relative. The applicant was found inadmissible to the United States pursuant to §§ 212(a)(6)(B), (a)(6)(C)(i), and (a)(9)(B)(i)(I) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. §§ 1192(a)(6)(B), (a)(6)(C)(i), and (a)(9)(B)(I). The applicant seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The officer in charge found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly. On appeal, the applicant reiterates that his wife is suffering medical complications from surgery, and that she requires his presence. The entire record was reviewed in rendering this decision, and the AAO concurs with the officer in charge's finding that the applicant failed to establish that his wife would suffer extreme hardship if he is not allowed to enter the United States.

Section 212(a)(6)(B) of the Act provides:

> Failure to attend removal proceeding.-Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

The officer in charge found the applicant subject to the above ground of inadmissibility because he failed to appear for deportation on January 8, 1998. There is no provision for a waiver of this five-year bar.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—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.

The officer in charge based the finding of inadmissibility under this section on the applicant's procurement of several nonimmigrant visas through willful misrepresentation of material facts.

Section 212(i) provides, in pertinent part:

> (i)(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

A § 212(i) waiver requires a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. In the instant case, the applicant's qualifying relative is his wife.

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 [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.

In the present application, the record indicates that the applicant entered the United States as a parolee on June 1, 1994. On October 4, 1995, the immigration judge found the applicant to be excludable, and on January 8, 1998 he failed to apear for deportation. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until he left the United States in 2002. The applicant now seeks admission within ten years of his 2002 departure; therefore, he is inadmissible to the United States under § 212(a)(9)(B)(II) of the Act.

It must be noted that, while the bars resulting from inadmissibility under §§ 212(a)(6)(B) and 212(a)(9)(B)(i)(I) prevent the applicant from seeking admission for five and ten years, respectively, from his last departure, the bar resulting from the misrepresentation provision of § 212(a)(6)(C)(i) is indefinite. The hardship standard the applicant must meet in order to obtain a waiver under either § 212(i) or § 212(a)(9)(B) is the same, however; therefore, the analysis of eligibility under both waivers will be explained in a single discussion below.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez,* the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to § 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> 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).

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).

The applicant's wife wrote in her statement submitted with the original Form I-601 waiver application that she suffered from medical complications after surgery which made it impossible for her to work full time. She also noted that her sons, who are in their early twenties, would find it difficult to support her financially, and she needed the applicant for material and moral support. The record does not contain any documentation establishing the severity or effect of the applicant's wife's medical condition, nor is there any evidence that she is unable to work or care for herself.

The record fails to establish that the applicant's wife would suffer extreme hardship if the applicant is refused admission. In reviewing the applicant's and his wife's statements, it appears that his spouse will face no greater hardship than the unfortunate but expected difficulties arising whenever a spouse is removed from the United States. While the prospect of separation or involuntary relocation nearly always results in 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 exists.

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), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *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); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See* INS v. Jong Ha Wang, *450 U.S. 139 (1981)* (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to his wife as required under INA §§ 212(i) and 212(a)(9)(B), 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B). In proceedings for application for waiver of grounds of inadmissibility under §§ 212(i) and 212(a)(9)(B) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.