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: JUN 15 2006

IN RE:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois. The matter 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 determined to be inadmissible to the United States pursuant to 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 procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a citizen of the United States and the beneficiary of an approved Petition for Alien Relative (Form I-130). He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse and child.

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 11, 2004.

On appeal, counsel contends that the decision of Citizenship and Immigration Services erred by ignoring evidence submitted demonstrating exceptional and unusual hardship to the applicant's spouse including the emotional and economic hardship of rearing a child alone. *Form I-290B,* dated September 9, 2004. In support of these assertions, counsel submits a brief; copies of the documents previously submitted by the applicant with the waiver application; articles and reports addressing country conditions in Poland and an Internet article addressing issues confronted in single parent homes. The entire record was reviewed and considered in rendering a decision on the applicant's 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.

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 August 1, 2000, the applicant presented a fraudulent passport to United States Government officials in order to obtain admission to the United States.

A section 212(i) waiver of the bar to admission resulting from violations of section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself 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 suffer extreme hardship if she relocated to Poland in order to remain with the applicant. Counsel indicates that the decision of the district director erred in finding that no concrete evidence was submitted with the application to support this assertion. *Brief in Support of Appeal*, undated. On appeal, counsel states that the knowledge of the applicant's spouse about conditions in Poland is derived from the accounts of family members with personal knowledge of the situation. Counsel provides copies of several reports supporting the beliefs about Polish society articulated by the applicant's spouse in her previous statement. *See, e.g., The International Crime Survey: Poland*, by [redacted] and [redacted]*: Health Care Reform in Poland* (printed on September 8, 2004). Counsel contends that the submitted documentation establishes that crime is more prevalent in Poland than in the United States and that the level of health care available in the applicant's home country is poor and inadequate, characterized by an inequitable allocation of resources and a limited response to local needs. ***Brief in** Support of Appeal* (citing ***The International Crime Survey: Poland*, by** [redacted] **and** [redacted] ***Health Care Reform in** Poland* as well as *Preventing Crime & Creating Safer Communities*, The University of the West of England and *Health Crisis in Poland: International Implications*, National Defense University). In addition, the previous statement of the applicant's spouse indicates that she will face difficulty obtaining employment in Poland owing to the fact that she holds a degree in Spanish. In the statement, the applicant's spouse refers to an article published in the Chicago Tribune, a copy of which appears in the record, evidencing the depressed state of the Polish economy. *Letter from* [redacted] dated April 12, 2004.

While the documentation on appeal establishes that relocation to Poland may impose extreme hardship on the applicant's spouse, the record fails to establish that the applicant's spouse would suffer extreme hardship if she remains in the United States in order to maintain access to quality health care and residence in a country with adequate job prospects and low crime statistics. Counsel states that separation from the applicant will destroy the family unit that the applicant and his spouse have created leading the couple's child to be raised in a fatherless home. *Brief in Support of Appeal.* Counsel submits an article from The Ad Council website providing statistics regarding children who are raised in single parent homes. Counsel further references information from the National Fatherhood Initiative and the statement of a published author on this subject to support the assertion that the absence of the applicant could significantly hinder the health and well-being of his child. *Id.* The AAO notes that the applicant's child is not a qualifying relative under section 212(i) of the Act and therefore, any hardship suffered by the applicant's child is only considered insofar as it results in

hardship to the applicant's spouse. The AAO acknowledges that separation from family members may be painful and difficult, however, counsel fails to establish that the hardship evidenced in the instant application is "extreme" in comparison to the hardship suffered by other individuals and families as a result of inadmissibility. The referenced statistics address single parent homes generally, however the extreme hardship inquiry for the instant application is a particularized consideration based on the situation as it is presented to Citizenship and Immigration Services by the applicant. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In the absence of substantiating documentation relating to the distinct situation of the applicant's family, the assertions of counsel are merely speculative.

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. Moreover, the AAO notes that the U.S. Supreme Court 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 AAO recognizes that the applicant's spouse would endure a certain amount of hardship as a result of relocation or due to separation from the applicant. However, her situation, if she 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 he 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.