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

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FILE: [redacted] Office: ROME, ITALY Date: APR 11 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Rome, Italy 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a lawful permanent resident and 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.

The Acting District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director,* dated February 10, 2005.

On appeal, the applicant states his wife faces numerous problems connected to living in the United States without any help. *Form I-290B and attached statement.*

In addition to the applicant's statement, the record also includes, but is not limited to, a statement submitted by counsel on behalf of the applicant's spouse; an employment letter for the applicant's spouse; and an earnings statement for the applicant's spouse. The entire record was reviewed and considered in rendering this decision.

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 [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 the applicant attempted to gain admission to the United States by presenting a counterfeit Austrian passport on February 23, 2000 at the Houston port of entry. *Form I-275, Withdrawal of Application for Admission/Consular Notification.* The applicant is therefore inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

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. The plain language of the statute indicates that hardship that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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, 565-566 (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 family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Poland or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse joins the applicant in Poland, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Poland. *See Permanent Resident Card for the applicant's spouse.* The record does not indicate what family members the applicant's spouse may have in Poland. Counsel asserts that Poland is not considered a highly desirable place to live. *Attorney's statement,* dated August 13, 2003. He states that Poland's unemployment is estimated to be between 15-20 percent and the cost of living is extremely high. *Id.* He notes that the applicant's spouse would be unable to find employment in Poland comparable to what she has in the United States. *Id.* The AAO acknowledges the assertions made by counsel, however, it notes that the record fails to include documentary evidence to support such assertions. Without supporting documentary evidence, the assertions of counsel will not meet the applicant's burden of proof in this proceeding. The assertions of counsel do not constitute evidence. *See Matter of Obaigbena,* 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980). While the record includes an earnings statement for the applicant's spouse, it fails to document how the applicant's spouse would be financially affected if she departed the United States. Additionally the AAO observes there is nothing in the record that shows the applicant and his spouse would be unable to sustain themselves financially from a location outside of the United States. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Poland.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The record fails to address what family members the applicant's spouse may have in the United States. The applicant states that his spouse has to face numerous problems living in the United States on her own without any help. *Statement from the applicant.* As a shop assistant, she is unable to earn enough to pay the rent and cover many other expenses. *Id.* The AAO observes that the record indicates that

the applicant's spouse works as a cashier in a supermarket rather than as a shop assistant and fails to document the specific expenses incurred by the applicant's spouse. Furthermore, as previously noted, there is nothing in the record that shows that applicant would be unable to financially sustain himself and contribute to his family's well-being from a location outside of the United States. Although the applicant states that he is unemployed (*See statement from the applicant*), the record fails to document the reasons why the applicant is unable to obtain a job. The applicant states that his spouse is lonely and being homesick negatively affects her state of mind. *Statement from the applicant.* As her husband and future father of their children, the applicant would like to give his spouse daily support. *Id.* The AAO notes that the applicant attributes his wife's emotional distress to homesickness and loneliness rather than their separating. Counsel asserts that the applicant's spouse is extremely close to the applicant and talks with him often on the phone. *Attorney's statement,* dated August 13, 2003. If the applicant would be unable to join his spouse in the United States, it would be difficult for them to live apart. *Id.* The expensive cost of airfare between the United States and Poland would make travel by the applicant's spouse financially unaffordable and very rare. *Id.*

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 will endure hardship as a result of separation from the applicant. However, the record indicates that her situation, if she remains in the United States, is typical of individuals separated as a result of removal and does not rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in 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(a)(6)(C) 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.