U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: ROME, ITALY Date: MAY 30 2007

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 District Director, Rome, Italy, denied the waiver application, and it 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 is 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 attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized U.S. citizen. She 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 her spouse.

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 Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated September 21, 2005.

The record reflects that, on August 29, 1998, the applicant married her spouse, [redacted] (Mr. [redacted]. On February 23, 2000, the applicant applied for admission to the United States by presenting a fraudulent Austrian passport. On February 24, 2000, the applicant was removed from the United States pursuant to the visa waiver program. On September 15, 2003, Mr. [redacted] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on October 5, 2004. On August 24, 2004, the applicant filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her spouse.

On appeal, counsel contends that the district director committed an error of law in applying the incorrect standard in determining extreme hardship and did not consider all of the equities presented by the applicant. *See Counsel's Brief,* dated July 9, 2006. In support of his contentions, counsel submits the referenced brief, updated employment- and finance-related documentation, a psychological report, immigration-related documentation, country conditions reports and copies of documentation previously provided. The entire record was reviewed in rendering a decision in this case.

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) 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 district director based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the record reflecting the applicant's attempt to procure admission into the United States by fraud in 2000. On appeal, counsel does not contest the district director's determination of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon 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.

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 section 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).

Since M[redacted] is a U.S. citizen and is not required to reside outside the United States as a result of the denial of the applicant's waiver, extreme hardship must be established whether he resides in the United States or Poland.

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 record reflects that M is a native of Poland who became a lawful permanent resident in 1997 and a naturalized U.S. citizen in 2003. The applicant and Mr.[redacted] have a six-year old daughter who was born in Poland. The record reflects further that the applicant and Mr. [redacted] are in their 30's and Mr. [redacted] may have some health concerns.

Counsel asserts that Mr. [redacted]s six-year-old daughter was born a U.S. citizen under section 322(a) of the Act. In that the record establishes that Mr. [redacted] was not yet a U.S. citizen at the time his daughter was born, she did not automatically acquire U.S. citizenship at birth. *See section 301(g) of the Act.* Neither has she subsequently acquired citizenship under section 320 of the Act based on her father's naturalization as she has

never resided in his custody in the United States as a lawful permanent resident. The record also fails to establish that Mr. [redacted]'s daughter has derived citizenship under section 322 of the Act as a result of his naturalization. To obtain naturalization on behalf of a child under section 322 of the Act, an applicant must not only meet citizenship and residency requirements, but also prove that the child is residing in his or her legal and physical custody outside the United States and is temporarily present in the United States pursuant to a lawful admission. In that the record does not demonstrate that Mr. [redacted]'s daughter has ever resided in his custody outside the United States or been temporarily admitted to the United States, she cannot have acquired citizenship through her father's naturalization under section 322 of the Act. Although Mr. [redacted] daughter is not a U.S. citizen and, as previously noted, is not a qualifying relative in a waiver proceeding under section 212(a) of the Act, the AAO will nevertheless consider hardship to her to the extent that it may contribute to the hardship suffered by her father.

Counsel contends that the district director erred in citing to and comparing the applicant's case to precedents involving suspension of deportation. Counsel specifically cites the district director's use of *Matter of Uy,* 11 I&N Dec. 159 (BIA 1965), and *Lee v. INS,* 550 F. 2d 554 (9th Cir. 1997), as precedent inappropriately cited by the district director. Counsel asserts that, in *Matter of Uy*, the Board of Immigration Appeals (BIA) granted the alien's application for suspension of deportation because the alien's return to his native country, after having spent many years in the United States, would constitute extreme hardship to the alien. Counsel goes on to contend that the case can be distinguished from the case at hand because the person facing extreme hardship is Mr. [redacted], a U.S. citizen, and not an alien. The AAO notes that *Matter of Uy* did not grant an application for suspension of deportation, but affirmed the denial of suspension of deportation and the granting of voluntary departure. Additionally, *Matter of Uy* did not hold that an alien's return to his native country after having spent many years in the United States would constitute extreme hardship. Furthermore, while *Matter of Uy* involves a suspension of deportation case and what would constitute extreme hardship to an alien, the district director correctly cites this precedent, because it sets forth factors and findings in regard to "extreme hardship" and whether the person who would suffer extreme hardship is an alien or a qualifying relative is not relevant. What constitutes extreme hardship to a person is not dependent on whether the person who would suffer the hardship is an alien, lawful permanent resident or a U.S. citizen. What constitutes extreme hardship to a U.S. citizen would constitute extreme hardship to a lawful permanent resident or an alien. Counsel asserts that the district director incorrectly cited *Lee v. INS* because the case involved a motion to reopen for an application for suspension of deportation because the hardship in the applicant's case is not hardship to an alien but to a qualifying relative. As discussed above, whether the hardship discussed in a precedent case is hardship to an alien or a qualifying relative is not relevant. Counsel also asserts that the district director erred in citing *Lee v. INS* in regard to whether financial loss is synonymous with extreme hardship because the case involved after-acquired equities that must be given diminished weight, whereas the applicant's equities were established well before she attempted to enter the United States in 2000. However, *Lee v. INS* separates the diminished weight given to after-acquired equities from its discussion of whether financial loss constitutes extreme hardship. Additionally, *Lee v. INS* cites to additional case law establishing that financial loss is not synonymous with extreme hardship in which after-acquired equities are not involved.

Counsel asserts that Mr. [redacted] will suffer extreme hardship if he remains in the United States without the applicant because, while he has been able to visit the applicant and his child in Poland for six months of the year since the denial, he cannot keep it up for much longer. Counsel asserts that there is a tremendous void in Mr. [redacted]'s life due to his separation from the applicant and his child, placing him under a severe emotional strain. Counsel asserts that Mr. [redacted] continues to suffer from medical problems due to his separation from the applicant and his child and Mr. [redacted] has been diagnosed with Adjustment Disorder with mixed anxiety

by a psychiatrist. Counsel asserts that Mr [redacted] symptoms include a depressed mood, sad and anxious affect, and feelings of hopelessness and helplessness, which have become worse and now include increased nervousness, low energy and insomnia. Counsel asserts that Mr[redacted] has been financially devastated since learning of the applicant's denial. Counsel asserts that Mr.[redacted]s only source of income is from his employment as a truck driver, at which he works an aggregate six months out of the year. Counsel asserts that Mr.[redacted]s travel to Poland costs him approximately $900 each time in airfare alone, besides the money he spends on transportation, food and other living expenses in Poland. Counsel asserts that while Mr.[redacted] currently resides with his mother and stepfather, who are responsible for all the household bills, he financially supports the applicant and his child in Poland and plans to purchase his own home with the money he is saving. Counsel asserts that Mr.[redacted] separation from his child has left him feeling hopeless and helpless because he has not been able to raise her. Counsel asserts that only parents are sufficiently sensitive to the myriad, constantly fluctuating needs and drives of children to be able to provide them with the necessary support and guidance to prepare them for later life and Mr.[redacted] has been denied the opportunity to raise his child in the country in which she has a right to be raised and educated. Counsel asserts that Mr.[redacted] mother, a naturalized U.S. citizen, depends on Mr.[redacted] for emotional support because she has physical ailments, such as irritable bowel syndrome, that are exacerbated by the applicant's immigration situation and the fact that her husband, who owns a trucking business, is not at home for sufficient periods of time to care for her. The AAO notes that counsel asserts the district director based his decision in regard to Mr.[redacted] mother's dependence on Mr.[redacted] for financial support on incorrect facts. However, the affidavit submitted by Mr.[redacted] does not identify whether Mr.[redacted]s mother relied on him either financially or emotionally and, as such, an analysis of whether Mr.[redacted] would suffer extreme hardship in relation to whether his mother was financially dependent upon him was appropriate in light of the evidence. The AAO also notes that, despite counsel's statement on appeal that he was submitting an affidavit from Mr.[redacted]s mother regarding her dependence on Mr.[redacted] the affidavit is not included in the evidence of record.

Mr.[redacted] in his affidavit, states that he would suffer extreme hardship if he were to remain in the United States without the applicant because it did not take him long to feel the drawbacks of their separation and he started to have more and more "down" days. He states that he became exhausted and depressed. He states that his frequent travel to Poland has depleted his savings and has jeopardized his employment. He states that it is painful to think about how much he has missed with his child and that he is very concerned about his child's emotional health because she needs a family with both of her parents together to share the simple joys and hardships of everyday life. He states that he has been fighting recurring depression.

A psychological report from a psychiatrist indicates that she found Mr.[redacted] to have symptoms of depressed mood, sad and anxious affect, and to be overwhelmed with feelings of hopelessness and helplessness. The evaluation states Mr.[redacted] reported his symptoms have become worse, complaining of increased nervousness, low energy and insomnia. The psychological report states Mr[redacted]'s psychiatric history is negative for any symptoms or treatment and he does not have any major medical problems. The psychological report further provides an initial diagnosis of adjustment disorder with mixed anxiety and depressed mood and recommends that Mr.[redacted] undergo individual psychotherapy and be prescribed antidepressant medication if his symptoms do not improve. The psychological report finally states that Mr.[redacted] symptoms directly relate to being separated from his wife and child and it is anticipated that his symptoms will be alleviated when he is reunited with his family in the United States.

The submitted psychological report appears to be based on a single interview between Mr.[redacted] and the psychiatrist who conducted the evaluation. Accordingly, it does not reflect the insight and detailed analysis

commensurate with an established relationship with a mental health professional, thereby rendering the psychiatrist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Moreover, the record does not contain evidence that Mr. [redacted] has received psychological treatment or evaluation other than during the appointment on which the submitted psychological report is based. Accordingly, the evaluation will be given little evidentiary weight. While the AAO acknowledges that Mr. [redacted] is experiencing distress and depression as a result of separation from his spouse and child, the record does not establish that these reactions constitute hardships that are beyond those commonly suffered by aliens and families upon removal. Additionally, the record reflects that Mr. [redacted] has family members, such as his mother, stepfather and brother, in the United States who may be able to support him emotionally in the absence of the applicant. The AAO notes that counsel asserts the district director failed to acknowledge Mr. [redacted]s recurring depression and did not evaluate the submitted psychological report. However, AAO notes that the psychological evaluation was not conducted until after the Form I-601 had been denied and was only submitted on appeal.

Financial records indicate that in 2004 Mr. [redacted] earned approximately $6,000. However, the record reflects that Mr. [redacted] lives with his parents who may also be able to provide him with other financial assistance in the absence of the applicant. The AAO notes that Mr. [redacted]s stepfather owns and operates the business that employs him. Moreover, while counsel asserts that Mr. [redacted] must support the applicant and his child in Poland because the applicant is unemployed, there is no evidence in the record to establish that the applicant is unable to find employment in Poland that would ease Mr. [redacted]s financial burdens. Additionally, the record reflects that the applicant has family members in Poland, such as her parents, who may be able to assist her financially, also easing Mr [redacted]s financial obligations. The AAO acknowledges the financial demands on Mr. [redacted]r. However, the evidence in the record does not support a finding of financial loss that would result in an extreme hardship to Mr. [redacted]er if the applicant's waiver request were to be denied, even when combined with the emotional hardship that has been previously described.

Counsel asserts that Mr. would suffer extreme hardship if he were to join the applicant in Poland because he faces the possibility of relocating to a foreign country where he will not be able to find suitable employment, which would force him to live in poverty. Counsel asserts that Mr. [redacted]'s relocation to Poland would result in a severe financial hardship and not a mere loss of income. Counsel asserts that Mr. [redacted] ties to Poland are limited. Counsel asserts that Poland would not be safe for Mr. [redacted] because of the high incidence of street crime and the high rate of automobile accidents. Counsel asserts that Mr. [redacted] would not be able to obtain adequate medical treatment because, although medical care is available in Poland, the facilities are not comparable to those in the United States and often demand immediate cash payment for health care services. Counsel asserts that Mr. [redacted]uld suffer hardship because he would leave behind his mother, who suffers from physical ailments and relies upon him for care. Mr. [redacted] in his affidavit, asserts that he cannot consider moving back to Poland because the United States is now his country. He states that, if he returned to Poland he would be separated from his mother who depends on his help and support. He states that he would loose his job, benefits and everything for which he has worked so hard. He states that his family has always been important to him and, with the job shortage in Poland, he would be unable to provide for them.

Having analyzed the hardships counsel and Mr. [redacted]r claim Mr [redacted] will suffer if he were to join the applicant in Poland, the AAO finds that they do not constitute extreme hardship. Counsel states that Poland has the highest unemployment rate in the European Union with a rise in unemployment to approximately 17.6 percent, but submits no evidence that demonstrates that Mr. [redacted] and the applicant would fall within this

category. Nor does the evidence in the record describe the characteristics of the population living in poverty. Counsel asserts that Mr. [redacted] would most likely earn only minimum wage because he only holds a certificate from a trade school and that the money earned would not provide a decent standard of living. The evidence does not establish that Mr [redacted] or the applicant would be unable to earn more than a minimum wage or establish the characteristics of the population that earns only a minimum wage. The AAO notes that the country conditions report, which counsel cites as evidence that the minimum wage in Poland does not provide a decent standard of living, also states that the minimum wage was raised in January 2006 to rectify this problem. Accordingly, the record does not demonstrate that the applicant and Mr. [redacted] would be unable to obtain *any* employment in Poland. While the employment the applicant and Mr. [redacted] may be able to obtain may not be comparable to the employment they would have in the United States, economic detriment of this sort is not unusual or extreme. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996)*; Ramirez-Durazo v. INS,* 794 F.2d 491, 498 (9th Cir.1986). Moreover, the record reflects that the applicant has family members in Poland who may be able to assist the applicant and Mr. [redacted] physically and financially. The record also reflects that Mr. [redacted] mother claims approximately $475,000 in yearly income rendering her able to assist the applicant and Mr. [redacted] financially. As discussed above, there is insufficient evidence in the record to establish that Mr. [redacted] suffers from a physical or mental condition that requires treatment unavailable in Poland or that would cause him to suffer extreme hardship if he relocates. There is no evidence in the record, besides counsel's assertions, that Mr. [redacted] s mother suffers from a physical ailment and requires Mr. [redacted] support. Further, the record reflects that Mr. [redacted] s mother has other family members in the United States, such as her spouse and other adult son, who may be able to assist her in Mr. [redacted] s absence. Counsel's assertions that relocation to Poland would not be safe for Mr. [redacted] due to the high incidence of street crime, which sometimes involves violence is unpersuasive. Country conditions reports indicate that Poland generally has a low rate of violent crime and the incidence of street crime, which sometimes involves violence, is moderate. *U.S. Department of State Consular Sheet, Poland, http://travel.state.gov/travel/cis_pa_tw/cis/cis_1000.html.* While the country conditions indicate that alcohol consumption is frequently a contributing factor in automobile accidents in Poland, it does not indicate that there is a high rate of automobile accidents and states that there is a zero tolerance for driving under the influence in Poland. *U.S. Department of State Consular Sheet, Poland,* http://travel.state.gov/travel/cis_pa_tw/cis/cis_1000.html. While the hardships that would be faced by Mr. [redacted] in relocating to Poland--readjusting to the culture, economy, environment, separation from friends and family, and a potential inability to obtain the same opportunities and medical care he would receive in the United States--are unfortunate, they are what would normally be encountered by any spouse joining a removed alien in a foreign country. Additionally, the AAO notes, as previously indicated, that the applicant's spouse, as a U.S. citizen, is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, Mr. [redacted] would not experience extreme hardship if he remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that Mr. [redacted] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is denied admission to the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable 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, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. 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 has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). 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. The AAO notes that counsel's arguments in regard to Mr. [redacted] expectations at the time he married the applicant, the fact that the fraud was an isolated incident, the applicant's good moral character and the applicant's ties to the United States relate to whether she would warrant a waiver as a matter of discretion and not to whether extreme hardship has been established.

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