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, ILLINOIS Date: NOV 05 2007
consolidated therein]

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 District Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Poland who was found to be inadmissible to the United States under sections 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), and 212(a)(6)(C)(ii)(I), 8 U.S.C. § 1182(a)(6)(C)(ii)(I), for presenting a fraudulent United States passport in an attempt to gain entry into the United States. The record indicates that the applicant is married to a naturalized United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 United States citizen wife and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director Decision*, dated December 29, 2005.

On appeal, the applicant, through counsel, asserts that the "Director did not apply the appropriate standard of extreme hardship..." *Form I-290B*, filed January 26, 2006. Additionally, counsel states that because of the applicant's wife's current medical condition, she would suffer extreme hardship if the applicant were removed from the United States or if she joined him in Poland. *Id.*

The record includes, but is not limited to, counsel's brief, affidavits from the applicant's wife, two psychological evaluations by [redacted], Ph.D. and [redacted] Ph.D. regarding the applicant and his wife's mental health, statements from the applicant and his wife's family and employers, a court disposition from the Circuit Court of Cook County, Illinois, and letters from [redacted] D.C., [redacted] M.D., and [redacted], D.C. regarding the applicant's wife's medical condition. The entire record was reviewed and considered in arriving at a decision on the appeal.

Sections 212(a)(6)(C)(i) and 212(a)(6)(C)(ii) of the Act provides, in pertinent part, that:

> (i) 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.
>
> (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 (including section 274A) or any other Federal or State law is inadmissible.
>
> (iii) Waiver authorized.—For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides, in pertinent part, that:

> (i) (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 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 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 January 26, 1995, the applicant applied for admission to the United States at the Cincinnati/Northern Kentucky International Airport, by presenting a fraudulent United States passport in the name of [redacted]

The AAO notes that aliens making false claims to United States 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. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford aliens in the applicant's position, those making false claims to United States citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

> In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] 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.

As the applicant's false claim to United States citizenship occurred prior to September 30, 1996, he is inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO notes that the record contains several references to the hardship that the applicant's children would suffer if the applicant were denied admission into the United States. Section 212(a)(6)(C) of the Act provides that a waiver, under section 212(i) of the Act, is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children.

In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's children will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that on May 19, 1995, the applicant attempted to reenter the United States by presenting a Polish passport in the name of [redacted] On May 20, 1995, the applicant was removed from the United States. In October 1995, the applicant reentered the United States without inspection. On November 28, 1998, the applicant married Ms. [redacted], a lawful permanent resident, in Chicago, Illinois. On March 8, 1999, the applicant's daughter, [redacted] was born in Chicago, Illinois. On June 11, 1999, the applicant's wife became a United States citizen. On March 19, 2001, the applicant's wife filed a Form I-130 on behalf of the applicant. On June 7, 2001, the Form I-130 was approved. On July 15, 2001, the applicant was arrested for soliciting for prostitution. On December 27, 2001, the applicant was convicted of disorderly conduct and was sentenced to three (3) months probation. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) and a Form I-601. On March 3, 2004, the applicant's Form I-485 was denied. On March 29, 2004, the applicant filed a motion to reopen the District Director's decision on the Form I-485. On September 24, 2003, the applicant's son, [redacted] was born in Chicago, Illinois. On October 25, 2004, the District Director reopened the applicant's Form I-485. On December 29, 2005, the District Director denied the applicant's Form I-485 and Form I-601, finding he failed to demonstrate extreme hardship to his United States citizen wife.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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 himself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen wife. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The 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.

The AAO finds that the applicant meets the requirements for a waiver of his grounds of inadmissibility under section 212(i) of the Act, in that the applicant's spouse would suffer emotional and financial hardship as a result of her separation from the applicant. The applicant's wife states the applicant "is the main contributor to [their] household expenses. Without him [they] would lose [their] home." *Affidavit from* [redacted], dated October 16, 2001. The AAO notes that the applicant works as a subcontractor for a

company that he owns with his wife. Counsel states that the applicant's wife "relies on Applicant to assist her in conducting daily essential activities at home, as well as activities for their children. Applicant's wife, [redacted] suffers from severe spinal pains in her lower back and neck, for which she is participating in a treatment which entails visiting her physician twice a week. Her medical ailment is severe, and she is partially disabled due to her affliction." *Brief in Support of Appeal*, filed February 27, 2006. The applicant's wife states she suffers "with severe spinal pains in the lower back and neck" and the "doctor has requested that [she] receive treatment twice a week. However due to [her] medical insurance not covering [her] treatments, it would be a hardship for [her] to continue to receive treatment based on [her] earnings alone. [She is] also unable to drive [herself] back home after the treatments and would need [her] husband to transport [her] to and from the doctor's appointments." *Affidavit from* [redacted], dated January 23, 2006. Counsel states that "[w]ithout [the applicant's] income, [the applicant's wife] would not be able to afford the medical treatments nor provide for her children's expenses and monthly bills." *Brief in Support of Appeal, supra.* Dr. [redacted] states that the applicant's wife "is under [his] care and treatment...for severe spinal pains in the lower back and neck. She is partially disabled due to this affliction, and as a result requires assistance at home with activities of daily living." *Letter from* [redacted], *Lemont Family Health Center*, dated January 16, 2006. [redacted] D.C. diagnosed the applicant's wife with Lumbago and Cervicalgia due to Lumbar Vertebral Dysfunction. *Letter from* [redacted], *Orion Diagnostic and Chiropractic Center*, dated December 7, 2006. Mr. [redacted] states the applicant's wife is restricted from "carrying, pushing or pulling heavy objects, or twisting the back. Patient need [sic] assistance in these daily activity [sic] to avoid relapse." *Id.* Additionally, the applicant's wife receives allergy injections on a weekly basis. *See Note from* [redacted] dated November 29, 2006. The applicant's wife states their son has "serious heart complications. This would also be a hardship to care for [their] child alone. Currently both [the applicant and her] are responsible for the medical costs and transporting him to and from the doctor for tests and appointments." *Affidavit from* [redacted] *supra.* Dr. [redacted] diagnosed the applicant's son with a heart murmur. *See Note from* [redacted] dated January 13, 2006. Dr. [redacted] states "it would be profoundly deleterious for this family to be split up. It would impose severe emotional consequences on all people involved...as well as create irredeemable financial hardship for [the applicant's wife]....Should [the applicant] be deported, [she believes] this would create a psychological crisis for [the applicant's wife and daughter] that would be practically irreparable." *Clinical Evaluation by* [redacted], dated July 11, 2001. Dr. [redacted] states the applicant's wife will "manifest numerous symptoms associated with depression and anxiety", if the applicant is removed to Poland. *Psychological Report by* [redacted] dated July 5, 2001.

Counsel states that the applicant's wife would suffer extreme hardship if she relocated to Poland to be with the applicant. Counsel states the applicant's wife "would face a decline in the standard of living if forced to move to Poland, a country where joblessness lingers." *Brief in Support of Appeal, supra.* The AAO notes that the applicant's wife has been employed with the same company since March 1995 and she has a retirement plan and health benefits through her employment. The AAO notes that the applicant's wife left Poland when she was 12 years old and has only returned for vacations. *See Clinical Evaluation by* [redacted] *supra; see also Psychological Report by* [redacted], *supra.* Additionally, the applicant's wife's family all reside in the United States. *Brief in Support of Appeal, supra.* The applicant

and his wife "have an extremely close relationship with their nuclear families most of whom live in the U.S." *Psychological Report by* [redacted], *supra*.

The AAO notes that counsel states that the applicant "has no prior criminal record, evidencing his respect for law and order." *Brief in Support of Appeal*, *supra*. However, the applicant was arrested on July 15, 2001, for soliciting for prostitution, and on December 27, 2001, the applicant was convicted of disorderly conduct and was sentenced to three (3) months probation.

The AAO finds that the applicant meets the requirements for a waiver of his grounds of inadmissibility under section 212(i) of the Act, in that the applicant's spouse would suffer emotional and financial hardship as a result of her separation from the applicant. The record establishes that the applicant's wife relies on the applicant's income to obtain treatment for her medical condition. Additionally, the applicant's wife's emotional problems would be exacerbated whether the applicant is removed from the United States without her or whether she joins him in Poland. Combined with the increased financial and familial burdens that the applicant's spouse will face if the applicant is removed from the United States, the cumulative hardship in this case is beyond that which is normally experienced in cases of removal. Accordingly, the AAO finds that the applicant has established that his United States citizen wife would suffer extreme hardship if his waiver of inadmissibility application were denied.

The favorable factors are the extreme hardship to his United States citizen wife, who depends on him for emotional and financial support; the applicant's stable work history in the United States since 1996; and the applicant's history of paying his federal income taxes. The unfavorable factors in this matter are the applicant's attempts to enter the United States through fraud, the applicant's periods of unauthorized presence and employment in the United States, and his criminal conviction for disorderly conduct on December 27, 2001. The AAO notes that the applicant has not been charged with any crimes since his last conviction.

While the AAO does not condone his actions, the AAO finds that the favorable factors outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.