**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

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**U.S. Citizenship and Immigration Services**

[redacted]

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FILE: [redacted] Office: CHICAGO, IL Date: JUN 11 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting 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 dismissed.

The applicant is a native and citizen of Poland who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance. The applicant is the son of two lawful permanent residents and seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States.

The District Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 11, 2006.

On appeal counsel for the applicant asserts that the District Director did not sufficiently analyze the supporting documentation and failed to explain the basis for his decision. Counsel further states that the evidence of record establishes that the applicant's parents would suffer extreme hardship if his waver application is denied.

Section 212(a)(2)(A)(i) of the Act states in pertinent part:

> (1) Criminal and related grounds. —
>
> (A) Conviction of certain crimes. –
>
> (i) In general. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or
>
> (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

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

> The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

The record indicates that the applicant was convicted for possession of cannabis, more than 2.5 grams but not more than 10 grams, under Section 720-550/4(b) of the Illinois Compiled Statutes on May 20, 2003. The record also indicates that the applicant was arrested on December 28, 2004, for possession of cannabis, Section 720-550/4(b). The disposition document submitted by the applicant indicates this case was stricken from the docket with leave to reinstate. As such, the applicant has one conviction for possession of marijuana (less than thirty grams) and is eligible to apply for a waiver pursuant to 8 C.F.R. § 212(h).

Counsel contends on appeal that the District Director violated 8 C.F.R. § 103.2(b)(8) by failing to request further evidence before denying the application. The cited regulation requires the District Director to request additional evidence in instances "where there is no evidence of ineligibility, and initial evidence or eligibility information is missing." *Id.* The District Director is not required to issue a request for further information in every potentially deniable case. If the District Director determines that the initial evidence supports a decision of denial, the cited regulation does not require solicitation of further documentation. Furthermore, even if the District Director committed a procedural error by failing to solicit further evidence, it is not clear what remedy would be appropriate beyond the appeal process itself, which has provided the applicant with the opportunity to supplement the record with additional evidence.

Counsel further asserts that the director failed to properly consider the factors in weighing the applicant's request for a waiver, citing *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). However, not all of the factors listed in Cervantes will need to be analyzed in any given case, as the elements which might or might not establish extreme hardship are dependent on the facts and circumstances of each case. *Id.* at 565, 566; *see also Matter of Chumptazi*, 16 I&N Dec. 629 (BIA 1978)(concluding that elements establishing extreme hardship will be dependent on the facts and circumstances of each case). Moreover, in *INS v. Jong Ha Wong*, 450 U.S. 139 (1981), the Supreme Court held that the Attorney General (now Secretary of Homeland Security) and his delegates have the authority to construe "extreme hardship" narrowly and that such a narrow interpretation is consistent with the extreme hardship requirement. Accordingly, the AAO finds the director to have properly exercised his discretion in weighing the evidence of record.

The AAO now turns to a consideration of the record as it relates to the applicant's claim to extreme hardship.

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 applicant 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.

> 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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she accompanies the applicant or remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record includes, but is not limited to, counsel's brief; bank records, employment and tax records for the applicant's father, disability and medical records for the applicant's father, court records pertaining to the applicant's criminal record, and a statement from the applicant. The entire record was reviewed and all relevant evidence considered in rendering this decision.

On appeal counsel asserts that the applicant's father's health, the applicant's family ties in the United States, his length of residence and loss of the applicant's economic support would result in extreme hardship to the applicant's father if the applicant were excluded. The applicant states that his father if very sick and is disabled, and needs the help and presence of another person at all times. The applicant further asserts that his mother's income is too low to cover the family's expenses, which includes their mortgage and his father's medical treatment. The applicant states that he is doing everything to help his mother support the family financially and care for his father. He contends that if he is removed from the United States, his family will lose his salary of $2,250 a month, an important part of the family's income. In Poland, the applicant asserts, it would be virtually impossible for him to find a job as the unemployment rate is 20 percent. He states that, even if he found a job, he would earn no more than $500 per month.

The record includes evidence of the applicant's father's medical conditions, establishing that he has several serious medical conditions and is disabled. However, as noted by the District Director, there is no evidence that the applicant has provided any income for his father's household, or to his father. The record contains a Form I-484 and G-325 indicating that the applicant is a student, thus it is unclear what revenue the applicant is generating. There is also no evidence that the applicant has provided for his father's day to day medical needs, or what the daily requirements for the applicant's father might be. The record indicates that the applicant's mother resides with the applicant's father, and the record fails to explain why this family member would not be present to support the applicant's father in the absence of 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 Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Therefore, the record does not establish that the applicant's

father would suffer extreme hardship if he remained in the United States in the event of the applicant's removal.

Extreme hardship to a qualifying relative must also be established if he or she were to relocate with the applicant. The record in the present matter does not, however, address the impact of relocation on the applicant's father. Accordingly, the AAO is unable to find that the applicant's father would experience extreme hardship if he returned to Poland with 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 husband faces extreme hardship if his wife is refused admission. In *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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his lawful permanent resident father as required under section 212(h) of the Act. 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 an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.