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

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: VIENNA, AUSTRIA Date: OCT 29 2009

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), of the Immigration and Nationality Act.

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

Perry Rhew,
Chief Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), Vienna, Austria. On March 10, 2006, the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion to reopen or reconsider the denial of the appeal. The motion will be granted. The previous decision shall be affirmed. The petition will be denied.

The applicant, [redacted], is a native and citizen of Poland who was found to be inadmissible to the United States under inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year.

The applicant sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act so as to join his naturalized citizen spouse in the United States. The OIC concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the OIC*, dated June 18, 2004. The applicant submitted an appeal, which the AAO dismissed, finding the record failed to establish extreme hardship to the applicant's spouse (his qualifying relative) if the waiver application were denied.

On motion, counsel submits additional evidence of a psychological evaluation by [redacted] a letter by [redacted] dated April 7, 2006, and an undated letter in which the physician failed to provide his or her name.

The AAO grants counsel's motion.

The applicant seeks a waiver of inadmissibility. A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from violation of section 212(a)(9)(B)(v) 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 to an applicant and to his or her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(a)(9)(B)(v) of the Act. Thus, hardship to the applicant and his U.S. citizen children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen 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).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA 1999). *Matter of Cervantes-Gonzalez* lists the factors considered relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors relate to an applicant's qualifying relative and 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. *Id.* at 565-566.

The factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996). The trier of fact considers the entire range of hardship factors in their totality and then determines "whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to the applicant's wife, [redacted] must be established in the event that she remains in the United States without the applicant, and alternatively, if she joins the applicant to live in Poland. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

With regard to the hardship that [redacted] would experience if she remained in the United States without her husband, the record contains a psychological evaluation of [redacted] by [redacted], letters by [redacted] and [redacted] a letter by [redacted] regarding [redacted] carpal tunnel syndrome, and a letter concerning [redacted] daughter.

[redacted] psychological evaluation of [redacted] dated April 10, 2006, states that she saw [redacted] for the first time on July 3, 2004, the second time on October 19, 2004, and the third time on April 4, 2006. She states that [redacted] reported being unable to take care of her own medical necessities, having financial debt, and worrying about the emotional well-being of her youngest daughter, [redacted]a. [redacted] diagnosed [redacted] with separation anxiety disorder and school and family problems, and she diagnosed [redacted] with Axis I: Major Depressive Disorder, Severe, Recurrent; Generalized Anxiety Disorder, with Panic Attacks; Axis II: Introverted Personality; and Axis III: Carpal Tunnel (requested surgery on 7/12/2004 . . .). The letter by [redacted] dated October 14, 2004, conveys that [redacted] has been a patient for five years and that [redacted] has, in addition to other medical problems, depression and panic attacks. The letter by [redacted] dated October 29, 2004, conveys that [redacted] has been a patient since October 2003, and is experiencing extreme anxiety attacks and depression.

The letter by [redacted] dated April 7, 2006, conveys that [redacted] works in factory and has been under her care since November 2001. [redacted] states that [redacted] re-evaluation shows numbness and weakness in both hands and the development of mild atrophy of her thenar muscles, which may suggest worsening of the carpal tunnel syndrome. She states that [redacted] was seen by an orthopedic surgeon who states her recovery period would be six weeks.

The submitted letter on Resurrection Family Center letterhead is undated and unsigned and there is no indication of who wrote the letter. The letter states that [redacted] is eight years old and is a patient who is seen a few times a month for abdominal pains and vomiting. The letter conveys that [redacted] is frequently sent out from school due to vomiting and was seen at Children's Memorial Emergency Room on December 2005 with vomiting and abdominal pain. It states that [redacted] was referred to a psychologist and a support group for children who have lost a parent.

claims that she is in financial straits and has delayed two surgeries because she would require financial support from her husband during recovery. There are no financial records of [redacted] income and financial obligations submitted on motion, which are needed to establish that she would be unable to cover monthly financial obligations without financial support from her husband. [redacted] does not provide any information about her husband's employment status in Poland and whether he is able to financially assist her.

Family separation must be considered in determining hardship. *See, e.g., Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) ("the most important single hardship factor may be the separation of the alien from family living in the United States").

However, courts have found that family separation does not conclusively establish extreme hardship. *See, e.g., Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991) (separation of the applicant from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission") (citing *Patel v. INS,* 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship).

[redacted] has continuing depression as a result of separation from her husband. [redacted] diagnosed her with depression in April 2006, and the letters by [redacted] and [redacted] show she had depression in 2004. In view of [redacted] continuing depression, the AAO finds that emotional hardship of as a result of separation from her husband, is of such a nature that is unusual or beyond that which is normally to be expected upon an applicant's bar to admission. *See Hassan* and *Patel, supra.*

In regard to [redacted] joining her husband to live in Poland, conveys that her daughters will not be able to attend school in Poland on account of their limited skill in the Polish language and Poland's different educational program. [redacted] children are now 8 and 18 years old. Although hardship to [redacted] children is not a consideration under section 212(a)(9)(B)(v) of the Act, the hardship endured by [redacted], as a result of her concern about the welfare of her children, is a relevant consideration.

reported that she has lived in the United States for 22 years, and because she is 48 years old she will have difficulty obtaining employment in light of Poland's economy and job market. She states that she was a teacher in Poland and would have to return to school in order to teach there. [redacted] has submitted no documentation in the record to demonstrate that she

would be unable to obtain employment in Poland. 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).

is concerned about having medical care in Poland due to striking physicians. However, there is no documentation in the record that shows that she would be without medical care in Poland. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra.*

In considering the hardship factors raised, both individually and in the aggregate, the AAO finds that the factors raised do not establish extreme hardship to the applicant's spouse if she were to join him to live in Poland.

The applicant has established extreme hardship to his spouse if she were to remain in the United States without him. However, he has not shown that she would experience extreme hardship if she were to join him to live in Poland. As such, extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), has not been established.

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(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden.

ORDER: The decision of the AAO, dated March 10, 2006, is affirmed. The waiver application is denied.