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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

#2

[redacted]

Date: DEC 29 2011 Office: CHICAGO FILE: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission into the United States by willful misrepresentation. He was also found inadmissible under section 212(a)(2)(A)(i)(I) of the Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. He seeks waivers of inadmissibility in order to reside in the United States with his U.S. citizen wife and father, and lawful permanent resident mother.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director,* dated June 23, 2009.

On appeal, counsel for the applicant asserts that the applicant has shown that his wife and parents will experience extreme hardship if the present waiver application is denied. *Brief from Counsel*, dated July 23, 2009.

The record contains, but is not limited to: a brief from counsel; documentation regarding the applicant's and his wife's financial resources and assets; a psychological evaluation and medical records for the applicant's wife; statements from the applicant, the applicant's wife, and the applicant's friends; documentation in connection with the applicant's child's activities; and documentation in connection with the applicant's criminal history. The entire record was reviewed and considered in rendering this decision.

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

> 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.

The applicant testified before a U.S. Citizenship and Immigration Services (USCIS, formerly Immigration and Naturalization Service) that in February 1994 he entered the United States with a Polish passport he purchased that had his photograph substituted for that of the true owner. Accordingly, he procured admission to the United States by making a willful misrepresentation of material facts (his true identity and lack of proper entry documents). The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, and he requires a waiver under section 212(i) of the Act. He does not contest his inadmissibility under section 212(a)(6)(C)(i) of the Act on appeal.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

(i) [A]ny 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 . . . is inadmissible.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The applicant was convicted in Illinois of theft for his actions on February 17, 1997. The field office director found that the applicant's conviction renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude, and the applicant does not contest this finding on appeal.

Inadmissibility under section 212(a)(2)(A)(i)(I) of the Act may be waived pursuant to the requirements of section 212(h) of the Act. In order to establish that he is admissible and eligible to adjust his status to lawful permanent resident, the applicant must obtain waivers of all grounds for which he is inadmissible. As the record clearly shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, the AAO will first assess whether he meets the requirements for a waiver under section 212(i) of the Act before analyzing his criminal history and eligibility for a waiver under section 212(h) of the Act.

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

> (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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife and parents are the qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang,* 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of

current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[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) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

In a statement dated April 20, 2006, the applicant's wife explained that she is a naturalized U.S. citizen and she has been with the applicant for over 20 years. She noted that they have two daughters who are deeply attached to the applicant, and that the applicant's departure would devastate their childhood and future. She stated that the applicant assists their older daughter with her math homework and helps their younger daughter fall asleep with stories. The applicant's wife indicated that the applicant's departure would also have drastic financial consequences for their family. She explained that they support themselves with a family-owned and operated motel, and that the applicant is the accountant, manager, and janitor. She asserted that she is not a substitute for the applicant in the business, and hiring assistants would decrease her income to an insufficient level to meet her and their daughters' needs. She added that she had significant depression that she overcame with the applicant's presence, and she fears he will not be here for her and their daughters when they need his help.

In a statement dated January 22, 2002 submitted with a prior Form I-601 waiver application, the applicant's wife indicated that she has resided with the applicant since October 1994 when he first arrived in the United States. She provided other facts, including that they purchased their home and that the applicant's departure would jeopardize their financial stability. She asserted that she would be unable to cope with the loss of the applicant's emotional and financial support should they become separated.

The record contains a report on the applicant's wife, conducted by a psychiatrist, [redacted] dated July 16, 2009. [redacted] described the applicant's wife's symptoms of depression, including a loss of energy or motivation, feelings of worthlessness, excessive worrying, difficulty sleeping, difficulty concentrating, and intermittent passive suicidal ideation. [redacted] reported that the applicant's wife has had a previous psychiatric hospitalization in October 2004 for major depression with suicidal ideations. He noted that the applicant's wife was treated with prescription medication. He indicated that the applicant's wife has not taken psychotropic medications over the past eight years, and until approximately 2 to 3 years ago she was in her usual state of health. He concluded that the applicant's wife's depression and current emotional state began and worsened due to the applicant's unclear immigration status. He found that the applicant's wife will continue to have depression as long as her present circumstances continue, with little chance of improvement and to the detriment of her family, especially their children. He recommended treatment with pharmaceuticals and follow-up care.

In a brief dated July 23, 2009, counsel provides that the applicant's wife was treated at a hospital from October 19 through October 25, 2000, for depression, poor sleep, anxiety, weight loss, poor coping skills, low self-esteem, and mood fluctuation. Counsel notes that two follow-up appointments were made in October and November 2000. Counsel asserts that, in light of the applicant's wife's psychological condition and history of mental illness, her emotional hardship resulting from being separated from the applicant and losing his financial support amounts to hardship that is unusual or beyond that which would normally be expected upon the removal of a spouse. Counsel takes issue with the field office director's finding that the record does not support that the applicant's wife will endure extreme emotional hardship, as she has continued to participate in their successful business activities and she has not had an emotional health crisis despite the denial of the applicant's Forms I-601 and I-485 applications. Counsel emphasizes that the applicant has not yet departed the United States, and his wife continues to receive his ongoing love and support and she has not given up hope that he will gain lawful permanent residence. Counsel adds that the applicant's wife has been compelled to seek psychiatric help, referencing [redacted] report.

Counsel contends that the applicant's wife would face extreme hardship in caring for their two young children without the applicant's support. Counsel indicates that the applicant's wife grows anxious and easily frustrated in caring for their children as a result of her declining mental health, and this situation would be exacerbated by the removal of the applicant. Counsel asserts that, without the applicant's presence, the applicant's children will be vulnerable to the applicant's wife being hospitalized and leaving them without a caretaker.

Counsel explains that the applicant sustained extensive personal injuries as a result of an accident, and he received proceeds from a personal injury suit. Counsel provides that the applicant and his wife have invested the funds to sustain their family, and that the applicant has directed these efforts.

In a brief dated April 24, 2006, counsel noted that all of the applicant's immediate family members reside in the United States, including his wife, daughters, parents, and numerous siblings and extended family members. Counsel indicated that the applicant and his wife are co-owners of a motel, and that the applicant's wife would be compelled to run the business on her own should the

applicant be removed. Counsel stated that the applicant's wife would have to hire three individuals to perform the applicant's tasks, which would force her to sell the motel. Counsel asserted that the applicant's wife would suffer extreme hardship should she relocate to Poland and have to sell the business, as she would be unable to realize a profit. Counsel further indicated that the applicant's wife would be unable to realize the full amount of potential equity in their home should she sell it to relocate to Poland. Counsel noted that the applicant and his wife jointly own multiple property ventures, including three properties in South Dakota and one and Florida, and that they would be unable to recoup the full value of the properties should they sell them due to the loss of the applicant's income.

Counsel asserted that the applicant's two daughters are involved in academic and extracurricular activities in the United States and they are receiving a quality education. Counsel provided that the applicant's daughters would be unable to make an easy transition from the United States to Poland, and they and the applicant's wife would face extreme hardship should they now be compelled to adjust to life there.

Counsel stated that the applicant's wife would suffer additional challenges in Poland, including the need to find employment to help meet their financial needs. Counsel noted that the applicant's wife does not have a college education, which would limit her opportunities. Counsel added that the applicant's wife may face age discrimination when competing with younger individuals for positions. Counsel asserted that the applicant's wife would be compelled to endure a significant reduction in her standard of living in Poland.

Upon review, applicant has shown that his wife will suffer extreme hardship should the present waiver application be denied. The record contains evidence that establishes that the applicant's wife faces mental health problems for which she has required significant treatment, extending over a period of over 11 years. While the applicant's wife has not received consistent treatment throughout that period, her recurring mental health problems reflect that she has a vulnerability to serious depression and suicidal ideation. Facing the removal of a spouse often causes substantial psychological difficulty for those affected. However, the record supports that the applicant's wife's emotional challenges are greater than those commonly experienced. The applicant's wife faces numerous challenges that can be characterized as common consequences of the removal of a spouse, yet the AAO evaluates her circumstances in light of the increased difficulty she will endure in meeting these hardships due to her mental health.

Applicant's wife indicated that she and the applicant have resided together since October 1994, for 17 years. Separating would constitute the interruption of a consistent relationship and living arrangement that has extended for nearly all of the applicant's wife's adult life. The applicant and his wife have two daughters, now ages 16 and 11. The AAO acknowledges that acting as a single parent for two children involves significant emotional, physical, and financial challenges, and that the applicant's wife would face difficulty caring for her children should the applicant reside in Poland and she remain in the United States.

The record contains documentation of the applicant's and his wife's financial assets, including multiple real properties with significant value and equity. The applicant's wife explained that she and

the applicant own a hotel, and that the applicant plays a key role in managing the business. The field office director conducted extensive analysis of the applicant's family's financial circumstances, and concluded that the applicant has not shown that his wife will face financial difficulty should the applicant reside outside the United States. The AAO agrees that the applicant and his wife appeared to have substantial assets and financial resources, and that his removal would not place his wife at risk of having unmet economic needs. Nor does the record show that the applicant's wife would lack adequate resources to hire assistance with operating their business. However, due consideration is given to the applicant's wife's concerns, and it is evident that the applicant's departure would require changes and new responsibilities for her which would contribute to her emotional hardship.

Considering all elements of hardship in aggregate, the applicant has shown that his wife will endure extreme hardship should he depart the United States and she remain.

The applicant has also shown that his wife will face extreme hardship should she relocate to Poland. The AAO finds the applicant's wife's mental health is significant factor in assessing the challenges she would endure in Poland. [redacted] stated that he has provided the applicant's wife's mental health care since her hospitalization in 2000, and relocating to Poland would interrupt her relationship with medical professionals who are familiar with her history and needs.

The applicant's wife immigrated to the United States in 1992, and now returning to Poland would separate her from her country and culture in which she has resided for most of her adult life. While the applicant and his wife have significant assets and financial resources, it is evident that they would have challenges in operating or selling their real estate holdings and hotel should they reside in Poland. While these challenges may not constitute a lack of adequate resources to meet their needs, it is understood that the effort and potential for losses would cause stress for the applicant's wife.

The applicant's wife has expressed concern for the experience of their two daughters should they relocate to Poland. The AAO acknowledges that uprooting a 16- and 11-year-old from their schools, friends, community, and culture would potentially create substantial emotional hardship for them, and it is evident that the applicant's wife would share in their children's difficulty.

The AAO has examined all elements of hardship to the applicant's wife in aggregate. Based on the foregoing, the applicant has distinguished his wife's hardship from that which is commonly endured by individuals who face the removal of a spouse, whether she relocates to Poland or remains in the United States. Thus, the applicant has shown that denial of the present waiver application "would result in extreme hardship" to his wife, as required for a waiver under section 212(i) of the Act.

In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. All negative factors may be considered when deciding whether or not to grant a favorable exercise of discretion. *See Matter of Cervantes-Gonzalez, supra,* at 12.

The negative factors in this case consist of the following:

The applicant entered the United States by willful misrepresentation. The applicant has also been convicted of an act of theft. The applicant has remained in the United States for a lengthy period without a lawful immigration status.

The positive factors in this case include:

The applicant's U.S. citizen wife will suffer extreme hardship should the applicant reside outside the United States. The applicant's U.S. citizen daughters and father, and his lawful permanent resident mother will face hardship should he depart the United States. The applicant has resided in the United States since 1994, and he will face difficulty should he return to Poland. The applicant has provided support for his U.S. citizen wife during difficult emotional times, and played an integral role in the care of his U.S. citizen children.

The applicant's entry through misrepresentation and conviction for theft call into question his veracity and respect for the laws of the United States. However, these actions occurred over 14 years ago, and the record does not show that the applicant has a propensity to engage in further criminal or dishonest acts. The AAO finds that the applicant's presence in the United States poses significant benefits for his wife and children, and that these positive factors outweigh the gravity of his prior misconduct. Accordingly, the AAO finds that the positive factors in this case overcome the negative factors, and the applicant warrants a favorable exercise of discretion.

Applicant has shown that he is eligible for a waiver under section 212(i) of the Act. Therefore, he has also met the requirements for a waiver under section 212(h) of the Act. In proceedings for an application for waiver of grounds of inadmissibility under sections 212(h) and (i) 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 met his burden that he merits approval of his application.

ORDER: The appeal is sustained.