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

(b)(6)

Date: FEB 15 2013 Office: CHICAGO, ILLINOIS FILE:

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:

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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois. An appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion. The motion will be granted and the underlying application remains denied.

The applicant is a native and citizen of Poland who was found to be inadmissible to the United States under 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 filed an Application for Waiver of Grounds of Inadmissibility (Form I-601), and on June 13, 2007, the Field Office Director denied the applicant's Form I-601, finding the applicant had failed to demonstrate extreme hardship to a qualifying relative. *Decision of the Field Office Director*, dated June 13, 2007. On July 13, 2007, the applicant appealed the Field Office Director's decision to the AAO. On July 12, 2010, the AAO dismissed the applicant's appeal. On August 11, 2010, the applicant, through counsel, filed a motion to reopen and reconsider the AAO's decision.

In its July 12, 2010 decision, the AAO found that the applicant had failed to demonstrate extreme hardship to a qualifying relative under section 212(i) of the Act. Although the AAO noted that the applicant had established that his U.S. citizen wife would experience extreme hardship if she remained in the United States without him, it also observed that he had failed to establish extreme hardship to her if she relocated to Poland. On motion, the applicant, through counsel, asserts that the applicant's wife will suffer extreme hardship if she joins the applicant in Poland and submits evidence in support of his claim. According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The record in support of the applicant's motion includes, but is not limited to, counsel's statement in support of the motion to reopen and reconsider, previous counsel's briefs, statements from the applicant's wife, medical and psychological documents for the applicant's wife, child support and custody documents regarding the applicant's stepson, household bills, financial documents, photographs, documents establishing family relationships, and articles about the economy and healthcare in Poland. The entire record was reviewed and all relevant evidence considered in rendering this decision.

As the applicant has submitted new documentary evidence to support his claim, the motion to reopen and reconsider will be granted.

Section 212(a)(6)(C) 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.
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> . . . .

(iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

(i) (1) The [Secretary] may, in the discretion of the [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 [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 first 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, his child, or stepson can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (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 of Immigration Appeals (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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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.*, *Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In the present case, the record indicates that on October 24, 1997, the applicant presented fraudulent bank statements in an attempt to procure a nonimmigrant visa. Based on the applicant's misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding.

The AAO previously determined that the applicant established that his U.S. citizen spouse would experience extreme hardship if she were to remain in the United States without the applicant. The AAO affirms its previous finding with respect to the extreme hardship that would be imposed on the applicant's spouse in the United States. However, the record fails to establish extreme hardship to the applicant's spouse if she joins the applicant in Poland.

Counsel claims that the applicant's wife will suffer medical hardship because she will lose "proper health care and insurance coverage in Poland." Medical documentation in the record establishes that the applicant's wife suffers from Grave's disease. In her letter dated August 21, 2006, Dr. [redacted] states the applicant's wife requires regular follow-up care and blood tests for her medical condition. Additionally, counsel states the applicant's wife's psychological condition has deteriorated

because of the applicant's immigration problems. In a psychological evaluation dated September 7, 2006, Dr. reports that the applicant's wife seemed unable to imagine relocating to Poland. She diagnoses the applicant's wife with major depressive disorder and indicates that she has a "low ability" to deal with stress. Counsel indicates that the applicant's wife's family is her "psychological anchor," and separating from them would cause her "irreparable harm." The motion does not include new evidence concerning the applicant's wife's psychological condition.

The applicant's wife states all of her immediate family resides in the United States, including her elderly parents. Counsel states the applicant's in-laws rely on the applicant's wife for assistance, and she would suffer stress and guilt if she had to move away from them. In her affidavit dated September 29, 2006, the applicant's wife states she helps her mother to care for her father, who had a heart operation and cannot work. No documentary evidence has been submitted explaining the severity and limitations caused by the applicant's father-in-law's medical conditions or establishing that he requires the applicant's wife's assistance.

Counsel states that the applicant's wife would suffer hardship by moving to Poland with their children. He claims that her son's biological father has visitation rights. Documentary evidence in the record establishes that the applicant's wife has sole custody of her son from a previous marriage and her ex-husband was not granted visitation rights. Counsel claims that the applicant's wife would have difficulty securing a court order allowing her to move to Poland with her son. However, court documents in the record show that the applicant's stepson's biological father has not had contact with him in "a substantial amount of time," and the applicant's wife was able to secure a court order changing her son's last name to the applicant's last name.

Counsel also claims that the applicant's wife will lose employment opportunities if she moves to Poland. The applicant's wife also claims that she would have difficulty finding employment to support her family in Poland.

The AAO acknowledges that the applicant's wife is a U.S. citizen, and that relocation abroad would involve some hardship. However, the applicant's wife is a native of Poland, and it has not been established that she does not speak Polish or that she is unfamiliar with the culture and customs of Poland. Additionally, the record does not contain sufficient documentary evidence showing that the applicant's wife would be unable to obtain employment in Poland that would allow her to use the skills she has acquired in the United States. Regarding the applicant's wife's medical conditions, the record lacks sufficient evidence establishing that she cannot receive treatment in Poland or that she must remain in the United States to receive treatment. Moreover, regarding the hardship that the applicant's child and stepchild may experience in Poland, they are not qualifying relatives under the Act, and the applicant has not shown that hardship to their child and stepchild has elevated his wife's challenges to an extreme level. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Poland.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of

relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, *supra* at 886. Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, *supra* at 632-33. As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the AAO's dismissal of the appeal is upheld and the underlying waiver application is denied.

ORDER: The motion is granted and the previous decisions of the Field Office Director and the AAO are affirmed. The application is denied.