**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**

**PUBLIC COPY**

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 28 2010

IN RE: Applicant: [redacted]

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

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by the Director, Vermont Service, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native of Poland and citizen of Canada, was found to be 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, and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and stepchildren and lawful permanent resident father.

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director,* dated February 21, 2008.

In support of the appeal, counsel for the applicant submits a brief and referenced exhibits. In addition, on November 24, 2009, the AAO received supplemental documentation in support of the appeal. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .
> >
> > > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
> >
> > . . . .
> >
> > (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien....

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

> (i) 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.

Section 212(i) of the Act provides that:

> (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...

With respect to the director's finding that the applicant is inadmissible under section 212(a)(9)(B)(i)(II), for unlawful presence, the record establishes that the applicant initially entered the United States without authorization in 1993 and did not depart until 2003, as further discussed below. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until 2003.

On appeal, counsel asserts that the applicant departed the United States in June 1999, and thus, it has now been more than ten years since the departure that made the applicant inadmissible and as such, the applicant is no longer inadmissible pursuant to section 212(a)(9)(B) of the Act. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Counsel has not provided any documentation to support the assertion that the applicant departed the United States in June 1999 and is thus no longer inadmissible pursuant to section 212(a)(9)(B) of the Act.

The AAO recognizes that electronic records from U.S. Immigration and Customs Enforcement (ICE) indicate that the applicant departed the United States in June 1999 and as such, the 10 year bar is no longer applicable for the applicant. The notation appears to be based on information provided by the applicant when apprehended by Canadian authorities in March 2001. However, based on a thorough review of the record, ICE's notations with respect to the 10 year bar are not supported by the record. Nor are they legally binding on USCIS. To begin, the record establishes that the applicant obtained a State of Illinois Driver's License in May 2000. On said driver's license, the applicant is listed as having a U.S. address. In addition, the applicant obtained a divorce from [redacted], in the Circuit Court of Cook County, Illinois, in May 2001, and the court found that "at the commencement of this action, Petitioner [the applicant] was a resident of the State of Illinois, and has been a resident for at least the last ninety days prior to the making of the findings..." *Judgment for Dissolution of Marriage,* dated May 16, 2001. Moreover, the applicant attempted to

enter Canada in March 2001 driving a tractor-trailer bearing Illinois tags. At that time, a United States Immigration Inspector noted "Subject has lived and worked in the USA since his entry in 1999. Although he is a landed immigrant in Canada on paper, his principle [sic] residence is in the USA." *See Form I-213 Record of Deportable/Inadmissible Alien,* dated March 30, 2001. As such, although the applicant may have become a landed immigrant of Canada in June 1999, it has not been established, despite ICE's notations to the contrary, that the applicant has been residing outside of the United States since June 1999.

The record contains documentation establishing that the applicant was in Canada from 2003 on. *Certificate of Divorce from the Superior Court of Justice, Ontario, Canada,* dated May 6, 2003 and *Memo from U.S. Consulate General in Toronto-NIV Unit,* dated May 22, 2003. As such, based on a review of the record, the applicant has not established that he departed the United States earlier than 2003, and remains inadmissible under 212(a)(9)(B)(i)(II) of the Act until at least 2013.

With respect to the director's finding that the applicant is also inadmissible under section 212(a)(6)(C) of the Act, for fraud or willful misrepresentation, for being in possession of a counterfeit Form I-551, Alien Registration Card (I-551), the applicant attests that he never used the I-551 to enter or attempt to enter the United States. The applicant further attests that he never used the I-551 to obtain employment in the United States. As he states,

> The first and last time I used this document in March 2001 when I was stopped by the Canadian authorities at the Queenston/Lewiston Bridge, and found to have what was apparently a counterfeit I551 card. However, because I held landed immigrant status in Canada, the Canadian officials allowed me to enter Canada. There never was any deportation, removal or exclusion proceedings instituted against me.

*Affidavit of* [redacted] dated March 2, 2007.

Based on a careful review of the record, the AAO finds that the applicant is *not* inadmissible under 212(a)(6)(C) of the Act as there is no evidence in the record that he used the I-551 to procure a visa, other documentation or admission into the United States or other benefit provided under the Act. He used the I-551 when encountered by Canadian Customs and Canadian Immigration at their Queenston, Ontario port of entry. *Supra* at 1. Therefore, the applicant cannot be found to be inadmissible under section 212(a)(6)(C)(i) of the Act for claiming lawful permanent residency status when encountered by Canadian inspectors, as attempting entry to Canada is not a benefit under the Act. Nevertheless, as discussed in detail above, the AAO has determined that the applicant's unlawful presence in the United States automatically renders him inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant is eligible to apply for a section 212(a)(9)(B)(v) waiver. 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.

> 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).

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's U.S. citizen spouse and lawful permanent resident father are the only qualifying relatives, and hardship to the applicant or his spouse's children, born in 1991 and 1994, cannot be considered, except as it may affect the applicant's spouse and/or father.

The first step required to obtain a waiver is to establish that the applicant's U.S. citizen spouse and/or lawful permanent resident father would encounter extreme hardship if they relocated abroad to reside with the applicant due to his inadmissibility. With respect to the applicant's lawful permanent resident father, this criteria has not been addressed. As such, it has not been established that the applicant's lawful permanent resident father would suffer extreme hardship were he to relocate Canada or Poland to reside with the applicant due to his inadmissibility.

As for the applicant's U.S. citizen spouse, in a declaration she asserts that she would suffer extreme emotional hardship as she has no family in Canada. In addition, she contends that she would not be able to obtain gainful employment abroad as she has no license to practice as a Physical Therapy Assistant, thereby causing her and her children financial hardship. *Affidavit of J*[redacted] dated March 6, 2007.

It has not been established that the applicant's spouse would experience extreme emotional hardship were she to relocate abroad to reside with the applicant. In addition, it has not been established that the applicant would not be able to support his spouse and step-children financially were they to relocate abroad, as the record indicates that he is the owner/operator of a transport company, and/or that the applicant's spouse would be unable to obtain gainful employment in her area of expertise to maintain her and her children's standard of living. Moreover, it has not been established that the applicant's spouse would be unable to return to the United States on a regular basis to visit her siblings. 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)). As

such, it has not been established that the applicant's spouse would experience extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

Extreme hardship to a qualifying relative must also be established in the event that he or she remains in the United States while the applicant relocates abroad based on the denial of the waiver request. With respect to the applicant's lawful permanent resident father, counsel references that the applicant's father suffers from numerous medical conditions. A letter from the applicant's father's treating physician confirms the medical conditions suffered by the applicant's father and a copy of two insurance statements, from January and February 1999, have been provided. Counsel has failed to outline the significance of these documents as it pertains to his assertion that the applicant's father will suffer extreme hardship were he to remain in the United States while his son relocates abroad due to his inadmissibility. As such, it has not been established that the applicant's father would suffer extreme hardship

As for the applicant's spouse, she asserts that she will suffer extreme emotional hardship. She notes that her first husband died of lung cancer in July 2001 and she believes that she needs to live in a united household with the applicant and her children. *Supra* at 2.

In support, the applicant submits a psychological evaluation from [redacted] Clinical Psychologist. Ms. [redacted] concludes that the applicant's spouse is describing a "constellation of symptoms consistent with major depression, single episode, moderate without psychotic features.... While her condition is currently in remission, she attributes the alleviation of her condition largely to meeting and marrying her current husband [the applicant]. It is my clinical opinion that much of Ms. [redacted] improved psychological functioning is attributed to feeling connected in a new relationship...." *Psychological Evaluation of* [redacted] *Psychologist,* dated October 23, 2006.

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any treatment plan for the conditions referenced by Ms. [redacted] to further support the gravity of the situation. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of exceptional hardship.

Nor has it been established that the applicant's spouse's children will suffer extreme hardship due to long-term separation from the applicant, thereby causing extreme hardship to the applicant's spouse. Finally, it has not been established that the applicant's spouse is unable to travel abroad on a regular basis to visit her spouse. It has thus not been established that the applicant's spouse will experience extreme emotional hardship were she to remain in the United State while the applicant relocated abroad due to his inadmissibility.

Although the depth of concern over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984).

The AAO recognizes that the applicant's spouse will endure hardship as a result of continued separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's U.S. citizen spouse is suffering extreme hardship due to the applicant's inadmissibility.

The record, reviewed in its entirety and in light of the [redacted] factors, cited above, does not support a finding that the applicant's U.S. citizen spouse and/or lawful permanent resident father will face extreme hardship if the applicant is unable to reside in the United States. Although the AAO is not insensitive to the applicant's spouse's and father's situation, the record does not establish that the hardships they would face rise to the level of "extreme" as contemplated by statute and case law. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant 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, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed. The waiver application is denied.