

**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. A3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H2

PUBLIC COPY

[REDACTED]

FILE:

Office: CHICAGO DISTRICT OFFICE

Date: AUG 07 2008

IN RE:

[REDACTED]

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

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] 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 (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. citizen spouse, [REDACTED] (CIS records indicate that Mr. [REDACTED] obtained U.S. citizenship on May 10, 2005).

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated March 6, 2004.

On appeal, counsel for Ms. [REDACTED] stated that she demonstrated that she meets the requirements for a grant of a waiver and that the denial of her waiver failed to take into consideration the extreme hardship that her husband would suffer. *Notice of Appeal to the Administrative Appeals Office, Form I-290B*, dated April 8, 2004. Counsel also indicated that he would submit a brief within 30 days. On May 15, 2006 the AAO requested a copy of that brief. There has been no response to that request. The record is, therefore, considered complete.

The record contains a letter from Ms. [REDACTED] physician, dated March 30, 2004; indicating that she was pregnant; her husband's application for naturalization, dated March 31, 2004; and documents submitted as attachments to her Application for Waiver of Ground of Inadmissibility (Form I-601), dated November 6, 2003, including: the couple's marriage certificate, Mr. [REDACTED] legal permanent resident card, joint bank account statements, joint tax return for 2002, and Ms. [REDACTED] diploma from DePaul University, granting the degree of Bachelor of Science in Commerce on June 16, 2002. The record also includes notes and a sworn statement taken during Ms. [REDACTED] interview with an immigration officer on June 19, 2000. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides:

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.

Section 212(i) of the Act provides:

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

Regarding the District Director's finding that the applicant is inadmissible, the record reflects that Ms. [REDACTED] admitted that she used a passport and visa that were issued to another person to enter the United States in 1995. Counsel does not contest the finding that Ms. [REDACTED] had therefore made a material misrepresentation to gain admission to the United States and was inadmissible under section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of inadmissibility is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant herself is not a permissible consideration under the statute. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(i) of the Act; *see also Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996). Though the record shows that Ms. [REDACTED]'s father is a U.S. citizen, she makes no claim of hardship to him, and therefore no consideration is given to him as a qualifying relative.

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, in this case the U.S. citizen husband of the applicant, 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).

In this case, the record reflects that Mr. [REDACTED] is a naturalized citizen who was born in Poland 1978. He became a U.S. citizen in 2005. Ms. [REDACTED] was also born in Poland in 1978 and came to the United States in 1995 to join her father and stepmother. The applicant and her husband were married in 2002. Documents from 2004, the most recent in the record, indicate that Ms. [REDACTED] and Mr. [REDACTED] live with Ms. [REDACTED] father and stepmother in Chicago. Most recent financial records, their joint tax return for 2002, show that Mr. [REDACTED] is self-employed as a heating contractor and had a gross income of \$33,000, and that Ms. [REDACTED] earned approximately \$20,000 as a secretary. It also indicates that they own a condominium, classified as residential rental property, that they rent out.

Other than the documents and financial records noted above, there is no information in the record that would be relevant to a hardship determination by the AAO. The record is silent as to country conditions in Poland and their impact, if any, on the ability of Mr. [REDACTED] to relocate to Poland to avoid separation from the applicant. There is no indication that he would suffer from lack of economic support if he chose to remain in the United States, as he has a marketable skill and is capable of earning a living, or that he would be unable to find employment or adjust to living in Poland if he chose to accompany the applicant. It appears that the applicant's husband faces the same decision that confronts others in his situation – the decision whether to remain in the United States or relocate to avoid separation.

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 spouse faces extreme hardship if the applicant is refused admission. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *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. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most individuals who are deported.

The AAO recognizes that [REDACTED] will endure hardship as a result of separation from his wife. However, his situation, based on the record, is typical of individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative rises beyond the common results of deportation to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under Section 212(i) of the Act, 8 U.S.C. § 1186(i). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. *See* 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.