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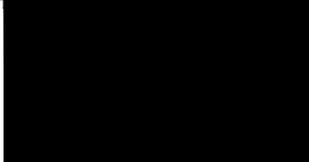


FILE:

Office: CHICAGO, IL

Date: JUN 05 2006

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:

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 Interim District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Poland who was determined to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized citizen of the United States and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse.

The interim district 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 Excludability (Form I-601) accordingly. *Decision of the Interim District Director*, dated June 10, 2003.

On appeal, counsel contends that the applicant has demonstrated that he meets the requirements necessary for granting a waiver of his inadmissibility. Counsel asserts that it is preposterous for Citizenship and Immigration Services (CIS) to assume that the applicant can obtain comparable employment in Poland. Counsel states that the denial of the waiver will result in extreme financial hardship to the applicant's spouse and that emotional hardship presented in the application must be considered. Counsel indicates that numerous factual and personal circumstances have changed during the pendency of the application and that CIS fails to take these changes into account. *Form I-290B*, dated July 9, 2003. In support of these assertions, counsel submits a brief. The entire record was reviewed and considered in rendering a decision on the applicant's appeal.

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

- (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:

- (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.

The record reflects that, on or about September 26, 1994, the applicant presented a false passport to United States Government officials in order to obtain admission to the United States.

A section 212(i) waiver of the bar to admission resulting from violations of section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

Counsel contends that the applicant's spouse would suffer extreme hardship if she relocated to Poland in order to remain with the applicant. Counsel indicates that the decision of the district director errs in asserting that the applicant and his spouse can obtain employment in Poland comparable to their respective positions in the United States. *Brief in Support of Notice of Appeal of Decision of District Director*, 3, undated. Counsel states, "Even a cursory look into Poland's current economic situation reveals a dire economic situation wherein the unemployment rate is at 18%." *Id.* Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In the absence of substantiating documentation, the assertions of counsel are not persuasive. Although counsel faults the decision of the district director for failing to complete "even a cursory look," counsel fails to provide evidence of Poland's current economic situation and therefore fails to make a case for a finding of extreme hardship on that basis. In short, the record fails to offer documentation at which to direct "a cursory look." While the AAO acknowledges that the employers of the applicant's spouse value her employment, counsel offers no evidence to support the assertion that "there is absolutely no indication that Mrs. [REDACTED] could find a similar position in Poland." *Letter from [REDACTED]*, dated May 31, 2002; *Brief in Support of Notice of Appeal of Decision of District Director* at 3.

Moreover, the record fails to establish that the applicant's spouse would suffer extreme hardship if she remains in the United States in order to maintain proximity to family members and employment in her chosen profession. Counsel contends that the applicant's spouse would face financial hardship in the absence of the applicant. Counsel asserts that the applicant provides for his spouse financially by holding a job and building assets in the United States. *Id.* at 4. The record reflects that the applicant's spouse is employed and was scheduled to obtain an undergraduate degree in December 2001. *Letter from [REDACTED]*, undated. The record fails to establish that the applicant's spouse is unable to provide for herself financially in the absence of the applicant. The applicant's spouse contends that she would be unable to afford the couple's house,

furniture and car on her salary alone. *Id.* While the need for a change in living situation would be regrettable, it does not form the basis for a finding of extreme hardship in the context of the instant application.

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 aliens being deported. Moreover, the AAO notes that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. The AAO recognizes that the applicant's spouse would endure a certain amount of hardship as a result of relocation or due to separation from the applicant. However, her situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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(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 appeal will be dismissed.

ORDER: The appeal is dismissed.