



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

H2

FILE:

Office: CHICAGO, ILLINOIS

Date:

JAN 11 2007

IN RE:

Applicant:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under § 212(i) of the
Immigration and Nationality Act (INA), 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the 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 is married to a U.S. lawful permanent resident (LPR) and is the beneficiary of an approved petition for alien relative. She seeks to adjust her status to that of LPR; however, she was found to be inadmissible to the United States pursuant to § 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 entered the United States in 1992 using a Swedish passport that she purchased. The record reflects that the applicant and her spouse have two U.S. citizen children. The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and children.

The district director denied the waiver application after concluding that the applicant had failed to establish extreme hardship to her LPR spouse. On appeal, counsel asserts that the applicant, her husband, and her children will all suffer psychological and financial consequences rising to an extreme level should the applicant be removed. The entire record was reviewed 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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's admitted use of a fraudulent Swedish passport to procure admission into the United States in 1992. Counsel does not contest the district director's determination of inadmissibility.

Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien . . .”

8 U.S.C. § 1182(i)(1). Hardship to the alien herself or to her children is not a permissible consideration under the statute. A § 212(i) waiver is therefore 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.

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 alien has established extreme hardship to a qualifying relative pursuant to § 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. The BIA has held:

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).

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).

The AAO notes that the record contains several references and documentation addressed to the hardship that the applicant's children would suffer if the applicant were refused admission. Section 212(i) of the Act provides that a waiver of inadmissibility under § 212(i) of the Act is applicable solely where the applicant establishes extreme hardship as to his or her U.S. citizen or lawful permanent resident spouse or parent. Congress excluded from consideration extreme hardship to an applicant's child. In the present case, the applicant's spouse is the only qualifying relative under the statute, and the only relative for whom the hardship determination is permissible.

The record in the instant case indicates that the applicant's husband has been employed as a carpenter and in the construction business, while the applicant is a housewife. On appeal, counsel submits information from the CIA World Factbook establishing that in 2004, Poland's unemployment rate was almost 20%. This information does not establish that the applicant's husband, however, would be unable to find employment in his or another field of work if he were to relocate to Poland to accompany the applicant. The record also does not establish that the applicant's husband would be unable to assist the applicant financially in the event that the applicant is removed from the United States.

On appeal, counsel submits a psychosocial assessment regarding the applicant, her husband, and her son. As noted above, only the hardship her husband will experience may be considered in this determination. The assessment is based on two interviews of the applicant's husband conducted on May 2 and 6, 2005 by [REDACTED], LCSW, CADC. The assessment reports that the applicant's husband expressed concerns regarding his ability to find childcare for his children should the applicant be removed. He stated that his sister, who lives nearby, would not be able to help him, since she is busy with her own children. There is no evidence on the record to support this assertion or to establish that the applicant's husband would not be able to obtain childcare assistance.

[REDACTED] concluded that the applicant's husband suffers from depression and experiences a great deal of stress, and that he would benefit from marital counselling. The AAO has carefully considered the information contained in the 2005 psychosocial evaluation submitted on appeal, in addition to the 2004 psychological evaluation submitted with the Form I-601 waiver application, and it is acknowledged that the applicant's spouse will be faced with difficult challenges and emotional hardship in the event the applicant is removed.

However, nothing in the reports indicates that the applicant's husband's experience would be more negative than that of similarly situated individuals, such that his suffering could be considered extreme.

Although the applicant's husband's anxiety is not taken lightly, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship there exists affection and emotional and social interdependence, and a separation or involuntary relocation nearly always results in considerable hardship to individuals and families. Yet 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.

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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her LPR spouse as required under INA § 212(i), 8 U.S.C. § 1186(i). In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.