



U.S. Citizenship
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FILE:

[REDACTED] Office: CHICAGO, IL

Date: JUN 22 2007

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:

[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, Illinois, and 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 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 having procured admission into the United States by fraud or willful misrepresentation in 2000. The applicant is the son of lawful permanent residents and has a U.S. citizen child. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the circumstances in the applicant's case do not rise to the level of extreme hardship. The application was denied accordingly. *Decision of the District Director*, dated March 21, 2005.

On appeal, counsel asserts that the district director erred in finding that the applicant did not prove extreme hardship and that based on this erroneous finding he improperly denied the applicant's waiver application. *Form I-290B*, dated April 19, 2005.

The record indicates that on December 2, 2004, during his adjustment of status interview, the applicant stated under oath and in a written statement that he purchased a fraudulent passport in Poland and then sometime in 2000, he presented the fraudulent passport to an immigration officer at a port of entry in Washington to gain entry into the United States.

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 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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. In the present case, the applicant's qualifying relatives are his lawful permanent resident parents. Hardship the alien or his child experiences due to separation will not be considered in this section 212(i) waiver proceeding unless it causes hardship to the applicant's parents. 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).

Extreme hardship to the applicant's parents must be established in the event that they reside in Poland or in the event that they reside in the United States, as they are not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in the adjudication of this case.

In this case, the only evidence of extreme hardship submitted was counsel's appellate brief. In his brief, counsel states that the applicant's parents would suffer financially and emotionally as a result of the applicant's inadmissibility. *Counsel's Brief*, filed May 25, 2005. He explains that the applicant's parents would be left to care for the applicant's son because his son's mother has no lawful status in the United States and no authorization to work. Counsel asserts that the applicant did not submit documentation to support these claims because the, "petitioner's contention does not allow for documentary proof, ...". *Id.* The AAO finds this assertion without merit. Documentary evidence can take many forms, including: affidavits from family members and/or family friends, copies of expenses and budgetary information, letters from employers, etc. Furthermore, the record seems to contradict counsel's claim that providing for their grandchild would constitute a financial hardship to the applicant's parents in that it shows the applicant's parents had a combined income of \$88,236.00 with \$135,000 in assets in 2002. *Form I-864, Affidavit of Support*, dated October 10, 2003. No documentation was submitted to show that with this level of income an added dependent would cause them great financial hardship.

In addition to financial hardship, counsel states that the applicant's parents would suffer extreme emotional hardship as a result of being separated from the applicant. *Id.* He has, however, submitted no evidence in support of this claim. Without documentary evidence to support counsel's claims, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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). Furthermore, counsel has not addressed whether the applicant's parents would experience extreme hardship as a result of relocating to Poland. For these reasons, the AAO finds that the applicant did not establish that his parents would experience extreme hardship as a result of his inadmissibility.

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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. See *id.* The BIA has also held that:

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).

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.

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.