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U.S. Citizenship
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Services

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[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO

Date:

AUG 28 2008

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h).

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 Field Office 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 the Czech Republic who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having violated any law or regulation of a State, the United States, or a foreign country relating to a controlled substance. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), for an offense of simple possession of 30 grams or less of marijuana, in order to reside in the United States with his spouse and U.S. citizen daughter.

The record reflects that the applicant was admitted to the United States in B-2 status on October 19, 1998 and granted a period of authorized stay expiring April 18, 1999. The applicant remained in the United States beyond the period of authorized stay. On March 19, 2001, the applicant pled guilty to possession of more than 2.5 but no more than 10 grams of marijuana in violation of section [REDACTED] of the Illinois Compiled Statutes. The applicant was sentenced to one year of court supervision and to perform community service. The applicant and his spouse, [REDACTED] a native of Poland and naturalized U.S. citizen, were married in the United States on August 31, 2002. The applicant's spouse filed the Form I-130 petition on September 5, 2003. The petition was approved on April 20, 2006. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on September 5, 2003. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 20, 2006. On February 5, 2008, the applicant was issued a Notice to Appear (Form I-862) before an immigration judge in removal proceedings. As of the date of this decision, the applicant is in removal proceedings.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of Field Office Director*, dated August 22, 2007.

On appeal, counsel submits "extensive evidence documenting the extreme hardship" the applicant's spouse and daughter will suffer if the waiver application is denied. *Memorandum of Law* dated September 20, 2007, at 3-11. Counsel asserts that the applicant's spouse and daughter are financially dependent on the applicant, and would suffer extreme hardship without his the money he earns from his business. *Id.* at 7. Counsel also contends that because the applicant's spouse suffered child abuse at the hands of her father, she and her mother are "extremely co-dependent upon each other," and separation of the applicant's spouse from her mother, or the applicant's spouse from the applicant would increase the anxiety and depression the applicant's spouse already experiences. *Id.* at 5. Counsel states that the loss of the daily physical presence and support of the applicant or his mother-in-law will "gravely affect [the applicant's spouse's] ability to function and care for [her daughter], resulting a negative effect on [her daughter's] development. *Id.* at 6. Counsel also asserts that the applicant's spouse would be unable to function in the Czech Republic, as she does not speak Czech, a difficult language to learn, which will result in social isolation and increased depression. *Id.* at 7. Counsel contends that the evidence submitted also demonstrates that the applicant, who has only one conviction for marijuana possession, merits a favorable exercise of discretion when this one adverse factor is weighed against the hardship his applicant's spouse and daughter would suffer without his support, his good character

and demonstrated rehabilitation, and his contribution to the community in the form of his business. *Id* at 11-12.

The records contains, among other documents, affidavits from the applicant and his spouse; affidavits from the applicant's mother-in-law and a friend; a "psychosocial assessment" by ██████████ a licensed clinical social worker; title, mortgage and insurance documents relating to the house owned by the applicant and his spouse; business documents relating to the applicant's remodeling business; tax returns; bank statements; apartment lease documents; automobile documents; utility bills; country conditions reports for the Czech Republic; the Wikipedia entry for the Czech language; and family photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act states in pertinent part:

- (i) In general.— . . .[A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-
 - (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The record shows that the applicant pled guilty to possession of more than 2.5 but no more than 10 grams of cannabis (marijuana) in violation of section ██████████ of the Illinois Compiled Statutes on March 19, 2001. The applicant was sentenced to one year of court supervision and community service. The record also reflects that the applicant was arrested on or before September 9, 2004 and charged with possession of not more than 2.5 grams of cannabis, but the charge was "stricken off" with leave to reinstate on September 30, 2004. The record contains no additional information concerning this charge. The applicant has not disputed that he is inadmissible under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act for having violated any law or regulation of a State, the United States, or a foreign country relating to a controlled substance.

Section 212(h) of the Act provides, in pertinent part:

- (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if—

....

- (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

The AAO notes that section 212(h) of the Act provide that a waiver of inadmissibility is dependent first upon à showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relatives that qualify are the applicant's spouse and daughter. Hardship to the applicant himself is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

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.*

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).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted.) Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes further, however, that 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In her affidavit, the applicant's spouse states that since having her daughter, she no longer manages the beauty salon her mother opened for her and instead is financially dependent on the applicant. She states that the applicant "helps me so much with our daughter" and that they wish to have another child soon. She indicates that she is very close to her mother and could not "handle it emotionally" to be separated from her. She also asserts that separation from the applicant would be "devastating" for her and her daughter. In his affidavit, the applicant adds that because his spouse and daughter are financially dependent on him, he does not know how they will survive if he is removed to the Czech Republic.

In her assessment, [REDACTED] states the applicant's spouse exhibited symptoms of depression and anxiety during two interviews and diagnoses her with generalized anxiety disorder. [REDACTED] recommends that the applicant's spouse receive individual therapy with the goal of alleviating her anxiety, helping her work through feelings about her father and work on separating from her mother. [REDACTED] states that it is her opinion that the applicant's removal from the United States will cause extreme and irreparable harm to the applicant's spouse and daughter.

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 and daughter faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant's spouse and daughter would suffer emotionally as a result of separation from the applicant if the applicant's spouse chooses to remain in the United States. However, the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, rises to the level of extreme hardship. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted psychological assessment is based on only two interviews totaling five hours **between the applicant's spouse and [REDACTED]**. **The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the generalized anxiety disorder allegedly suffered by the applicant's spouse.** Moreover, the conclusions reached in the submitted evaluation, being based on limited experience with the applicant's spouse, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering Ms. [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship.

The AAO acknowledges that the father of the applicant's spouse was physically abusive to her mother and unloving toward the applicant's spouse, and has stated that she was raised by her mother and her mother's longtime boyfriend [REDACTED] (who she considers to be her father) since she was nine years old. The AAO concludes that the emotional hardship described in the record is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

The AAO acknowledges that the applicant's spouse is currently dependent on the applicant financially, and notes that the applicant reported \$21,150 in adjusted gross income on their 2006 tax return. It is noted, however, that the applicant's spouse has been employed and supported by her mother in the past. The mere loss of current employment or the inability to maintain one's present standard of living or pursue a chosen profession does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. at 631 (BIA 1996). The evidence in the record does not show that the applicant and her daughter would suffer extreme financial hardship if the waiver application is denied and the applicant removed, or that the financial hardship they would experience, when combined with the emotional hardship of separation, goes beyond the common results of removal and rises to the level of extreme hardship.

The applicant has similarly failed to demonstrate that his spouse and daughter would suffer extreme hardship if they relocated to the Czech Republic with him. The AAO acknowledges that the applicant's spouse does not speak the Czech language and would be separated from her mother if she relocated to the Czech Republic. It is also noted that the applicant's daughter may have fewer educational opportunities in the Czech Republic than in the United States. However, the record shows that the applicant has family ties in the Czech Republic, and there is insufficient evidence in the record to show that he would be unable to financially support the applicant and their daughter there. The AAO concludes that the hardship of relocation in this case is the common result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. It is further noted that if the applicant's spouse relocated to the Czech Republic, she would be closer to her extended family members in Poland.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to his U.S. citizen spouse and U.S. citizen daughter as required under section 212(h) of the Act. 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), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. *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.