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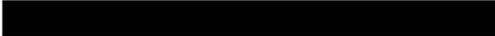
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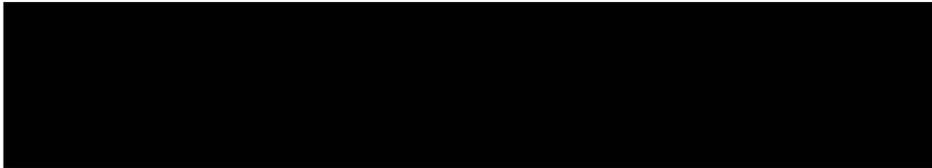
Date: DEC 11 2008

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Rome, Italy 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 attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized United States citizen 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 Acting District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly.<sup>1</sup> *Decision of the Acting District Director*, dated May 20, 2005.

On appeal, the applicant contends that Citizenship and Immigration Services (the Service) erred as a matter of law in finding that the applicant failed to establish extreme hardship to his qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B*.

In support of the waiver, the record includes, but is not limited to, a psychological evaluation for the applicant's spouse; a statement from the applicant's spouse; copies of airline tickets for the applicant; and employment letters for the applicant. The entire record was reviewed and considered in rendering this decision.

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

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<sup>1</sup> The Acting District Director also identified the applicant as being inadmissible under section 212(a)(9)(A) of the Act, but incorrectly noted that a waiver of the bar in section 212(a)(9)(A) of the Act is also dependent on a showing of extreme hardship to a qualifying family member. The AAO notes that to seek a waiver of inadmissibility under section 212(a)(9)(A) of the Act, an applicant must file the Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, and establish that the favorable factors in his or her case outweigh the negative.

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 December 9, 1999 the applicant attempted to procure admission into the United States by presenting his true passport and a B1/B2 visa that had been revoked by a Consular Officer in Warsaw, Poland. *Form I-275, Withdrawal of Application for Admission/Consular Notification*, dated December 9, 1999. On December 9, 1999 the applicant was ordered removed under section 235(b)(1) of the Act and was prohibited from entering, attempting to enter, or being in the United States for a period of 5 years from the date of his departure. *Form I-296, Notice to Alien Ordered Removed/Departure Verification*, dated December 9, 1999. The applicant was removed from the United States on December 11, 1999. *Id.* On October 4, 2000 the applicant attempted to procure admission into the United States by presenting a false Austrian passport and Form I-94W departure card at the McCarran International Airport, Las Vegas, Nevada. *Form I-867A, Record of Sworn Statement*, dated October 4, 2000; *Copies of false passport and Form I-94W*. The applicant was again removed from the United States on November 7, 2000. Based on his presentation of a fraudulent document at the port of entry, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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, 565-566 (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 family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Poland or the United States, as she is 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 adjudication of this case.

If the applicant's spouse travels with the applicant to Poland, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Poland. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. As of 2002, the parents of the applicant's spouse were living in Poland. *Id.* However, according to the evaluation, dated February 5, 2005, written by the applicant's spouse's psychologist, the applicant's spouse now lives in Brooklyn, New York with her father and one of her half-brothers. *Statement from [REDACTED], Ph.D., P.C.*, dated February 5, 2005. Another brother also lives in Brooklyn with his wife and three children. *Id.* The applicant's spouse told her psychologist that even if she moved to Poland, which she will not do, she feels she would be just as depressed because she would then be separated from her father with whom she has lived for many years and her brothers. *Id.* The record does not address what family members, other than her mother, the applicant's spouse may have in Poland. The applicant's spouse does not feel that she can obtain employment in Poland. *Id.* The AAO notes that the record fails to include evidence of economic conditions in Poland, the level of education of the applicant's spouse, and the work history of the applicant's spouse to support such assertions. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, there is nothing in the record to show that the applicant would be unable to support his spouse if she were to reside in Poland. The applicant's spouse stated that she wants to have children and does not want to educate them in Poland. *Statement from [REDACTED] Ph.D., P.C.*, dated February 5, 2005. The AAO notes that, as the applicant's spouse currently does not have any children, no claim to extreme hardship may be based on them. Moreover, even if the applicant and his spouse did have children, the record fails to establish how placing her children in a Polish school would affect the applicant's spouse, the only qualifying relative in this proceeding. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Poland.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The record demonstrates that the applicant's spouse has lived in the United States since 1995. *Form G-325A, Biographic Information sheet, for the applicant's spouse*. As previously noted, the record indicates that the applicant's spouse lives with her father and half-brother in Brooklyn, New York. *Statement from [REDACTED], Ph.D., P.C.*, dated February 5, 2005. Another brother also lives in Brooklyn with his wife and three children. *Id.* According to the applicant's spouse's psychologist, the applicant's spouse suffers from clinical depression as a result of being separated from the applicant and because she sees her chances of becoming a mother diminished as a result of their separation. *Id.* Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation is based on one interview. Therefore, 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 applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on one interview, do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. The applicant's spouse states that she is

lonely without the applicant. *Statement from the applicant's spouse*, dated January 10, 2005. She visits the applicant three times a year in Poland. *Id.* When it is time for her to return, she does not want to leave him. *Id.*

The AAO acknowledges the emotions of the applicant's spouse. However, 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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in 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(a)(6)(C) 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.