

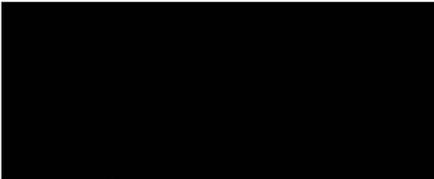
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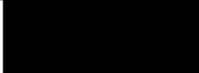
U.S. Citizenship  
and Immigration  
Services

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FILE:



Office: Chicago, Illinois

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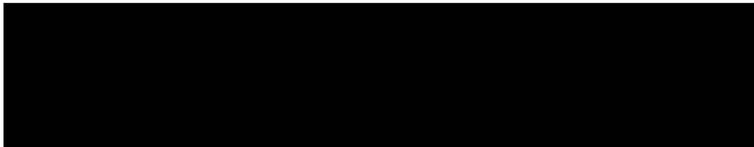
IN RE: Applicant:



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 PETITIONER:



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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting 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 sought admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with her spouse and daughter.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated October 6, 2005.

On appeal, counsel states that Citizenship and Immigration Services (“CIS”) erred in finding that the applicant had failed to demonstrate that her spouse would suffer extreme hardship if she were refused admission to the United States. Counsel asserts that CIS failed to give sufficient weight to the evidence of hardship presented in the case and failed to consider all the relevant factors related to extreme hardship. Specifically, counsel maintains that the psychological hardship to the applicant’s husband, including hardship related to their daughter’s medical condition, that would result from her removal from the United States would amount to extreme hardship. Counsel additionally asserts that the applicant’s U.S. Citizen parents would suffer extreme hardship if she were removed from the United States, and CIS did not give adequate weight to evidence of her father’s medical condition. In support of the waiver application and appeal, counsel submitted the following documentation: Affidavits from the applicant and her husband; copies of marriage certificates and naturalization certificates for the applicant’s husband, parents, and her husband’s relatives; a copy of the applicant’s daughter’s birth certificate; copies of permanent resident cards for the applicant’s parents, brother, and mother-in-law; a copy of the death certificate of the applicant’s husband’s father; Form W-2 for the applicant and her husband for 2001, 2002, and 2003; a psychological evaluation for the applicant’s husband; a letter from the church the applicant and her husband attend; photographs of the applicant with her family members in the United States; a letter from the applicant’s daughter’s pediatrician; a letter from the applicant’s father’s doctor and information on diabetes, one of his medical conditions; a copy of the applicant’s diploma and school records from Poland; evidence that the applicant is a registered nurse’s aide; evidence of the applicant’s husband’s employment and salary; bank statements, bills, and other financial documents for the applicant and her husband; mortgage documents and other evidence related to the home owned by the applicant and her husband; and copies of health insurance cards for the applicant and her family members. The entire record was reviewed and considered in arriving at a decision on the 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 [Secretary] may, in the discretion of the [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 [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 is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 to the hardship that the applicant's child would suffer if she relocated to Poland with her mother. Section 212(i) of the Act provides that a waiver of section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse and parents are the only qualifying relatives, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's qualifying relatives.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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. These factors included 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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> 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 addition, in *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the court 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. In *Hassan v. INS*, *supra*, the court further held 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 U.S. Supreme Court additionally 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 record reflects that the applicant is a thirty-seven year-old native and citizen of Poland who has resided in the United States since August 1995, when she entered without inspection by boat at an unknown location in Florida. She previously attempted to enter the United States on December 1, 1994 at Chicago, Illinois by presenting a fraudulent Polish passport and U.S. visa and was denied admission. She married her husband, a thirty-nine year-old native of Poland and citizen of the United States, on April 21, 2001. The applicant currently resides in Justice, Illinois with her husband and their four year-old daughter. Several members of their extended family, including her parents, live nearby.

Counsel asserts that if the applicant were removed from the United States, her husband would suffer emotional and psychological hardship due to being separated from her and their daughter, who would relocate to Poland with the applicant. *Brief in Support of Appeal* at 6. As evidence of this hardship counsel submitted a report from [REDACTED], a psychologist who evaluated the applicant's husband. The report indicates that the applicant and her husband attended a two-hour clinical interview on September 1, 2004. The report states that the applicant's husband indicated that he "cannot consider returning to Poland as a viable option." *See Report from Dr. [REDACTED]* dated October 19, 2004, at 2. the report further states that the applicant's husband "dreads an outcome that would force him and his wife and child to leave the U.S." and finds it difficult to concentrate on his work because of worries that they will have to leave the country. *Id.* [REDACTED] concludes that the applicant's husband would "endure great hardship" if the applicant is removed from the United States and further states:

Their relationship is clearly a close one, and if his wife is not permitted to remain, he will be torn between remaining here without her or their child, and leaving with her and their child. Neither alternative would be satisfactory to him . . . . [REDACTED]'s depressed condition is an additional source of stress and worry for [REDACTED] . . . . [REDACTED]'s own stress level is rising, with the beginnings of emotional symptoms such as irritability and impaired concentration. *Report from [REDACTED]* at 4.

The input of any mental health professional is respected and valuable in assessing a claim of emotional hardship. However, the AAO notes that although the submitted letter is based on a clinical interview of the applicant's spouse, the record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any diagnosis or history of treatment for any condition such as depression or anxiety. Further, the letter indicates that there was no basis to recommend treatment for the applicant's husband because he tended to minimize his emotional trouble. *Report from [REDACTED]* at 4. 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 psychologist. This renders the psychologist's findings speculative and diminishes the evaluation's value to a determination of extreme hardship.

The evidence does not establish that any emotional difficulties the applicant's husband would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of his spouse's deportation or exclusion. Although the depth of his distress caused by the prospect of being separated from his wife is not in question, a waiver of inadmissibility is available only where the resulting

hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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.

Counsel further asserts that if the applicant’s husband were to remain in the United States without the applicant, he would suffer financial hardship because he would have to support two households. *Brief in Support of Appeal* at 6. Counsel states, “his affidavit of support demonstrated only that he is able to support his wife in their current living situation, not that he would be able to support both himself and her if she were forced to return to Poland.” *Id.* Income tax returns and W-2 forms for the applicant’s husband indicate that he earned \$70,000 in 2003 and 2002. The record contains no documentation of more recent income, but the applicant’s husband states in his affidavit that the applicant does not work outside the home. *See affidavit of [REDACTED]* at 2. No documentation concerning economic conditions in Poland or other evidence was submitted to indicate that the applicant would be unable to find employment in Poland. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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). Further, even if the applicant’s relocation to Poland would have a negative effect on her husband’s financial situation, there is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant’s removal. Having to support the applicant in Poland therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant’s husband. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

Counsel asserts that the applicant’s husband would suffer extreme hardship if he were to relocate to Poland with the applicant due to his extensive family and financial ties to the United States, where he has resided since he was twenty years old. Counsel states that the applicant would have to “relinquish a lucrative career” and abandon the home he has owned for several years and would not be able to support the family in Poland. *Brief in Support of Appeal* at 7. The applicant’s husband further states,

[i]f I were to return to Poland to join [REDACTED] I would not likely be able to find a job in Poland. I would not be able to support my wife and daughter financially in Poland or plan our future. As mentioned above, after my long absence from Poland, and lack of work experience there, I would have a hard time finding employment. The unemployment rate in Poland is very high. *Affidavit of [REDACTED]* at 3.

Counsel further states that the applicant’s husband would suffer emotional hardship if he relocated to Poland because his entire family resides in the United States. *Brief in Support of Appeal* at 7. Counsel asserts that being separated from his mother, who relies on the applicant’s husband for emotional and other support since the death of her husband in 1998, would be especially difficult for him. *Id.* at 8. The applicant’s husband states:

My mother still can not get over the shocking death of my father. Since his death, she has come to rely on me the most. I am the oldest of all my siblings, and thus, I had to take over a lot of responsibilities. I am the rock of my family, the foundation. My entire family depends on me. Leaving this country and being apart from my family would be harmful for all of us.  
*Affidavit of [REDACTED] at 2.*

Although it appears the applicant's husband would experience emotional and financial hardship from having to leave his employment in the United States and from separation from his family, the evidence on the record is insufficient to establish that these difficulties would rise to the level of extreme hardship. As noted above, emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996). The AAO further notes that although the applicant's husband states that his mother relies on him greatly for emotional support and other types of assistance, he has a U.S. citizen brother and two U.S. citizen sisters who live in close proximity to their mother and it appears that they could provide this support in his absence. The applicant's husband further states that he would not likely find employment in Poland. The AAO notes that although he has resided in the United States for some time, the applicant's husband resided in Poland until he was twenty years old and is a native Polish speaker, and there is no evidence on the record, such as documentation of economic conditions in Poland, to support the assertion that he would be unable to find work there. Further, as noted above, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, *supra*, that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel states that the applicant's daughter suffers from congenital club foot, which would result in extreme hardship to the applicant and her husband if the applicant were to relocate to Poland with her daughter. *See Brief in Support of Appeal at 9-10.* Although the emotional effects of a serious medical condition of a qualifying relative's child could be considered in assessing his claim of extreme hardship, the evidence in the present case does not establish that the applicant's daughter is suffering from such a condition. A letter from her pediatrician states that the applicant's daughter is under her care for congenital club foot and routine baby care, but provides no detail about the severity of the condition. *See letter from [REDACTED] MD, dated October 20, 2004.* The AAO notes that aside from this brief letter from the doctor, the record contains no other information on her condition, such as a detailed letter from the treating physician explaining the nature and long-term prognosis of the condition, the treatment and medication prescribed, and the type of assistance that family members would need to provide. Without more detailed information, the AAO is not in a position to reach conclusions concerning the severity of a medical condition or the treatment and assistance needed. Further, no information was submitted concerning access to medical care in Poland that would support an assertion that any needed treatment would not be available there. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Counsel asserts that the applicant's father depends on the applicant to provide support and assistance related to his medical conditions. *Brief in Support of Appeal at 9.* A letter from his physician states that he "has several medical problems that require frequent office visits and medical supervision," including Insulin

Dependent Type 2 Diabetes, Hypertension, and Coronary Artery Disease. *See letter from* [REDACTED] [REDACTED] M.D. dated September 17, 2004. the letter further states:

Since [REDACTED] has difficulty with administering his insulin, and has such an extensive past medical history, he would benefit from nursing assistance. His daughter, [REDACTED] [REDACTED] born August 7, 1971, is a Registered Nurse and would be of great assistance to my patient . . . . [REDACTED] has been helping my patient with administration of his insulin and overall care of his current medical problems. It would be very beneficial to my patient if Ms. [REDACTED] would continue this care long term.

Although the treating physician states that it would be beneficial to the applicant's father if she were to remain in the United States and provide care for him, it does not appear that this care could not be provided by another family member, such as the applicant's mother or her brother, who lives in close proximity. The AAO notes that information on Insulin Dependent Diabetes submitted by counsel states that the insulin shots needed by patients are generally injected by the patient himself, and even if the applicant's father has difficulty doing this, it does not appear that he would need the assistance of a trained nurse to provide the injections. *See Kidsource.com, "Insulin-Dependent Diabetes."*

It appears from the record that any emotional, financial, or physical hardship to the applicant's husband or parents would be the type of hardship that family members would normally suffer as a result of removal or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991); *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). The applicant made no claim that her father would experience hardship if he were to relocate with her to Poland. Therefore, the AAO cannot make a determination of whether her father would suffer extreme hardship if he moved to Poland.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, 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 has failed to establish extreme hardship to her U.S. citizen spouse or parents as required under section 212(i) of the Act.

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. 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.