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U.S. Citizenship  
and Immigration  
Services

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FILE:

Office: VIENNA, AUSTRIA

Date:

OCT 02 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.

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 Officer in Charge, Vienna, Austria. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). A motion to reopen was filed and the previous decisions of the officer in charge and the AAO were affirmed. The matter is now before the AAO on a motion to reconsider. The motion will be dismissed and the previous decisions of the Officer in Charge and the AAO will be re-affirmed.

The record reflects that the applicant, a native and citizen of Poland, entered the United States on May 12, 1999 with a visa obtained through fraudulent means. The applicant presented fraudulent documents regarding her employment when she applied for a nonimmigrant visa on February 12, 1999 in Warsaw, Poland. As a result, the applicant is 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. The applicant is the spouse of a U.S. 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 her spouse.<sup>1</sup>

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of Officer in Charge*, dated April 25, 2003.

In support of the instant motion, the following documents are submitted: a letter from counsel, dated October 18, 2005; a letter regarding employment conditions in Lipno, Poland, dated August 23, 2005; a letter from a clinical psychologist with respect to the applicant's spouse; and a psychological evaluation regarding 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 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.

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<sup>1</sup> As referenced in the initial AAO decision, the applicant was also found inadmissible under 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) for being unlawfully present in the United States for more than 180 days; however, three years have passed since her departure from the United States and this bar to admission is now moot.

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. 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 held in *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) 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.

The applicant first asserts that she is suffering extreme emotional and financial hardship due to her inadmissibility. She contends that she is unable to find gainful employment in Poland and is suffering from depressive-anxiety disorders. Waivers of the bar to admission under section 212(i) of the Act resulting from a violation of section 212(a)(6)(C) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. In the present case, the applicant’s U.S. citizen spouse is the only qualifying relative, and any hardship to the applicant cannot be considered, except as it may affect the applicant’s spouse.

To begin, while the applicant has demonstrated that she is unemployable in Lipno, Poland, it has not been established that the applicant is unable to obtain gainful employment in another area of Poland, or in another country of the applicant’s choosing. The applicant’s inadmissibility does not restrict her to residing in her home country. Moreover, with respect to the applicant’s current medical situation, the AAO notes that a psychological evaluation pertaining to the applicant concluded that the applicant was suffering from “g depressive anxiety disorders...” *Psychological Evaluation and Translation from [REDACTED] Clinical Psychologist*, dated September 29, 2005. Although [REDACTED] has determined that the applicant is experiencing depressive anxiety, the record does not contain any documentation from a licensed mental health professional that establishes the applicant’s mental health treatment, if any, its short and long-term treatment plans, and the gravity of the situation. The record fails to establish what specific hardships the applicant is encountering due to her husband’s absence, and by extension, how said hardships are impacting the applicant’s spouse, the qualifying relative. The AAO thus finds that it has not been established that the applicant’s unemployment and her mental health issues are causing the applicant’s spouse extreme hardship.

The applicant further asserts that her U.S. citizen spouse will experience emotional and psychological hardship were the applicant unable to reside in the United States. As stated by the applicant's spouse's psychologist,

...I saw [redacted] [the applicant's spouse] in October of 2003....

...I again saw [redacted] on September 3, 2005 at which time he appeared considerably more depressed.... I felt that the current degree of depression warranted psychotropic medication in addition to individual therapy. He is currently taking 20 mg of Paxil daily.... The results of the scale indicated a severe level of current depression and a sense of hopelessness of being reunited with his wife.

Up to the date of this report I have seen him three times and will continue to see him weekly.... While I do not feel that he is suicidal at present, a further prolonged separation from his wife [the applicant] could possibly lead to tragic results....

*Letter from [redacted], Ph.D., Counseling Associates, dated September 27, 2005.*

With respect to the applicant's spouse's diagnosis of depression, the letter provided by [redacted] does not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [redacted] findings speculative and diminishing the letter's value to a determination of extreme hardship. Moreover, although [redacted] has determined that the applicant's spouse is experiencing a severe level of depression, the record indicates that the applicant's spouse has only met with the psychologist a total of five times in a period of two years, thereby failing to establish the severity of the situation. Moreover, it has not been established that the applicant's spouse's situation is extreme as he is able to maintain full-time gainful employment as a carpenter while supporting two households. Finally, it has not been established that the applicant's spouse is unable to continue traveling to Poland, his home country, on a regular basis, to visit with the applicant, as he has presumably been doing since their marriage in 2000.

The letter from [redacted] demonstrates that the applicant has a very loving and devoted spouse who is extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, 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, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(i), be above and beyond the normal, expected hardship involved in such cases.

The applicant further states that he is suffering financial hardship due to the fact that he is maintaining two households. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, “[e]conomic disadvantage alone does not constitute “extreme hardship.” *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that “lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.”); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, “the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.”); *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); *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

In this case, no financial documentation has been provided to establish the applicant's and his spouse's economic situation, including detailed information about their income and expenses, to corroborate that the applicant's spouse is suffering extreme financial hardship due to the applicant's inadmissibility.<sup>2</sup> 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)).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not been established that the applicant's spouse is suffering extreme emotional, psychological and/or financial hardship due to the applicant's absence.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. In this case, neither the applicant and/or her spouse have asserted any reasons why the applicant's spouse, a native of Poland, is unable to reside with the applicant in Poland, or in any other country of their choosing, due to the applicant's inadmissibility. The only reference to this criteria is made by counsel, who states that “...the unemployment rate in the District of Lipno, Poland where the beneficiary resides is in the amount of 29.1%. This document is provided to demonstrate the extreme hardship which the US citizen will face if he should relocate to Poland to join his wife....” *Supra* at 1. As previously referenced, there is no requirement that the applicant and/or her spouse reside in Lipno, Poland. As such, it has not been established that the applicant's spouse will encounter extreme hardship were he to relocate abroad to reside with the applicant.

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<sup>2</sup> The record indicates that in support of the instant motion, counsel, in his cover letter, stated that he was enclosing a “...copy of an income and expenditure statement from [REDACTED] showing earnings....” *Letter in Support of Appeal*, dated October 18, 2005. The AAO notes that although this document was listed by counsel as an enclosure, in both the packages sent to the AAO and to the Officer in Charge, Vienna, Austria, said document was not enclosed.

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 will face extreme hardship if the applicant is refused admission. The record demonstrates that he faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is refused admission. Although CIS is not insensitive to his situation, emotional and financial hardship are common results of separation and do not rise to the level of "extreme" as contemplated by statute and case law.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) of the Act, the burden of establishing that the application merits approval 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 previous decisions of the officer in charge and the AAO will be re-affirmed.

**ORDER:** The motion will be dismissed and the previous decisions of the Officer in Charge and the AAO will be re-affirmed. The waiver application is denied.