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U.S. Citizenship
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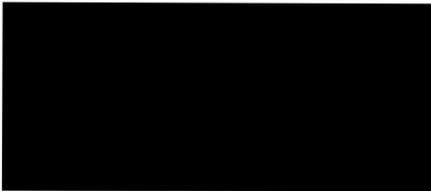
FILE: [Redacted] Office: VIENNA, AUSTRIA

Date: SEP 16 2008

IN RE: Applicant: [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:



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 Acting Officer in Charge, Vienna, Austria, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, a native and citizen of Poland, was found inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his naturalized U.S. citizen father.

The acting officer in charge concluded that that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated September 16, 2005.

In support of the appeal, the applicant submits a letter from the applicant's U.S. citizen father, dated September 30, 2005; a letter from the applicant's father's physician, dated September 24, 2005; and a letter from a psychiatrist relating to the applicant's father, dated September 30, 2005. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(2)(A)(i)(I) of the Act provides, in pertinent part:

[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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

The Attorney General [now Secretary, Homeland Security, (Secretary)] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

. . . .

- (1) (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 . . . ¹

Regarding the applicant's grounds of inadmissibility, the record reflects the commission of a crime involving moral turpitude, namely, a crime against governmental authority. The applicant was convicted of smuggling alcohol into Poland without paying taxes (equivalent to approximately \$65,000), a violation of Article 65 of the Polish Criminal Code, based on a 2001 incident. The maximum jail time for this conviction was two years; the applicant was sentenced to 8 months in jail and 3 years suspended sentence. As the aforementioned crime was committed after the applicant's eighteenth birthday, the district director correctly found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant is eligible for a section 212(h) waiver of the bar to admission.

A section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the inadmissibility bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son or daughter of the applicant. Hardship the applicant himself experiences based on his inadmissibility is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen father.

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 O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) the BIA 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.

The applicant first contends that his U.S. citizen father will suffer extreme emotional and physical hardship if a waiver of inadmissibility is not granted. As stated by the applicant's father,

...I have been ill and am suffering from major depressive disorder, diabetes, arthritis, poor vision. I also suffer from hypertension and now have heart problems. The denial of a visa to my son has caused much anxiety reflecting in a recent health report indicating a heart problem. I have lived for the day that I would be reunited with my son...

Letter from [REDACTED], dated September 30, 2005.

¹ The AAO notes that section 212(h) 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. If extreme hardship is established, CIS must then assess whether to exercise discretion.

In support of the applicant's father's attestations regarding his medical conditions, a letter has been provided by his physician. As stated by [REDACTED]

[REDACTED] [the applicant's father] is my patient with significant medical condition. He came to me for evaluation of his symptoms of the chest pain and shortness of breath. He had recently stress test. It showed that the patient has an ischemia and most likely significant coronary artery disease. His heart is weak and requires taking medication. The patient has the risk factor for heart failure and for coronary artery disease.... In this moment, the patient require treatment with medication for hypertension and heart failure but soon we need to perform advance studies including coronary angiogram....

Letter from [REDACTED] Midway Cardiovascular Diagnostics, dated September 24, 2005.

As for the applicant's father's assertions regarding his mental health, a letter is provided [REDACTED] M.D., Child, Adolescent and Adult Psychiatrist. As [REDACTED] states,

...Since receiving the news of his son's [the applicant's] denial of 'The Application for Waiver,' [REDACTED] [the applicant's father] has suffered a setback in his treatment. His depression has worsened significantly. He has had difficulty leaving his home. He has become more isolative and withdrawn.... His sleep has worsened significantly.... He is more fatigued secondary to lack of appropriate sleep and nourishment.... [REDACTED] has been having passive suicidal ideations....

In response to present worsening of [REDACTED] depressive symptoms, I have initiated an increase in his antidepressant medications, and frequency of psychiatric visits, in order to manage the symptoms....

Letter from [REDACTED] M.D., dated September 30, 2005.

Although the input of any health professional is respected and valuable, the AAO notes that the submitted evaluation and the follow-up letter provided by [REDACTED] appear to be based on presumably one or two interviews between the applicant's father and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's father. Moreover, the conclusions reached in the submitted evaluation do not reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering [REDACTED]'s findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Finally, although [REDACTED] in his evaluation of April 23, 2005, recommends that the applicant's father participate in individual psychotherapy, the record does not indicate whether the applicant's father has followed through with this recommendation, and if he has followed through with the recommendation, no documentation has been provided by the applicant's father's treating psychotherapist to further outline the applicant's father's current mental health situation, the gravity of the situation and the short and long-term treatment plan.

Moreover, with respect to the applicant's medical situation, the letter provided by [REDACTED] does not detail what specific assistance the applicant's father needs from the applicant, and what hardships he would face were the applicant to remain abroad. Moreover, no documentation has been provided from a physician that confirms the applicant's father's statement that he is unable to visit the applicant in Poland regularly due to his medical condition. In addition, it has not been established that the applicant's father is financially unable to visit his son regularly. Finally, it has not been established that the applicant's father's spouse is unable to provide the emotional and physical support that the applicant's father may need while the applicant resides abroad. 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)). While the applicant's father may need to make alternate arrangements with respect to his own care, it has not been established that such arrangements would cause the applicant's father extreme hardship.

The AAO recognizes that the applicant's father will endure hardship as a result of the continued 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. U.S. court decisions have repeatedly held that the common results of removal 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.

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 be above and beyond the normal, expected hardship involved in such cases.

Counsel further contends that the applicant's father will suffer extreme financial hardship were the applicant unable to reside in the United States. As stated,

. [redacted] [the applicant's father] is dependent on his son [the applicant] for his future retirement and for paying for current living costs and taking care of him.....

Letter in Support of Form I-601, dated May 18, 2005.

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).

To begin, no documentation has been provided that outlines the applicant's father's current financial situation and his needs, to establish that without the applicant's physical presence in the United States, his hardship would be extreme. Moreover, counsel provides no objective documentation that confirms that the applicant is unable to find gainful employment in Poland that would allow him to assist his father in the United States financially. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner'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). As such, the record fails to establish that the applicant's father's continued care and survival directly correlate to the applicant's physical presence in the United States.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates with the applicant abroad based on the denial of the applicant's waiver request. In this case, the only statement made by the applicant's father with respect to this criteria is that he is unable to travel to Poland due to his health. *Supra* at 1. Counsel also makes a brief reference to the poor economy in Poland. *Supra* at 4. No documentation has been provided that specifically delineates the hardships the applicant's father would face were he to relocate to Poland, his home country, to reside with the applicant. Nor has a letter from a medical professional been provided that establishes that the applicant's father would suffer extreme medical hardship were he to relocate abroad. As previously referenced, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen father would suffer extreme hardship if he were unable to reside in the United States, and moreover, the applicant has failed to show that his U.S. citizen father would suffer extreme hardship were he to relocate to Poland, or any other country of their choosing, due to the applicant's inadmissibility. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) 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. The waiver application is denied.