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U.S. Citizenship  
and Immigration  
Services

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tlz

[REDACTED]

FILE:

Office: CHICAGO, IL

Date: FEB 02 2009

IN RE:

[REDACTED]

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:

[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.

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, 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 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 procured admission into the United States by fraud or willful misrepresentation in March 1999. The applicant is married to a U.S. citizen and has a U.S. citizen son. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director found that the applicant has failed to show that his spouse would suffer extreme hardship as a result of the applicant's removal from the United States. The application was denied accordingly. *Decision of the District Director*, dated November 23, 2005.

On appeal, counsel states that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility and that the applicant's spouse's parents and siblings all live in the United States. *Counsel's Brief*, dated September 21, 2005.

The applicant, through a sworn statement taken on June 30, 2005, stated that in the end of March 1999 he entered the United States using a fraudulent passport. He states in an affidavit submitted on appeal that he entered the United States with a fraudulent Polish passport and visa. *Applicant's Affidavit*, dated June 15, 2005.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the alien

experiences or his child experiences due to separation is not considered in section 212(i) waiver proceedings unless it is shown to cause hardship to the applicant's spouse and/or parent.

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 applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

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). 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 extreme hardship to the applicant's spouse must be established both in the event that she resides in Poland or in the event that she resides in 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.

In his brief, counsel states that the applicant's spouse will suffer extreme hardship because of her extensive family ties in the United States and her lack of family ties in Poland. *Counsel's Brief*, dated September 21, 2005.

The record of hardship consists of affidavits from family members, financial documentation, photographs, a letter from the applicant's pastor, and documentation on country conditions in Poland. The applicant's spouse states that she met the applicant while in high school in Poland and that they have been together for nine years. *Spouse's Affidavit*, dated June 14, 2005. She states that it would be excruciating to be away from the applicant because he is her husband, the father of their son and her soul mate. She also states that she needs the applicant in her daily life, she depends on him for everything, and that the applicant's income supports the family. She states that in Poland they do not have any property or any possible immediate job prospects. The applicant's spouse states further that all of her closest family members live in the United States and that they are together all of the time. *Id.* The applicant's pastor, [REDACTED], states that he has counseled the

applicant's spouse and that he can verify that forced separation will take a heavy toll on the applicant's spouse and child. [REDACTED]'s Letter, dated June 4, 2005. He states that in his opinion, the applicant's spouse will not be able to live a normal life without the help and support of the applicant. *Id.* The applicant states that his spouse is very close to her family in the United States and that she could not afford to pay for their home without his help. *Applicant's Affidavit*, June 15, 2005. He states that his spouse would have to work full-time and find daycare for their son. The applicant also states that he has been working as a carpenter for a number of years. He states that his family is in Poland, he does not have any immediate job prospects in Poland and he does not know how he would support his family there. *Id.*

The financial documentation submitted includes 2004 and 2003 U.S. Individual Income Tax Returns showing that in 2004 the applicant and his spouse earned \$25,195 and in 2003 they earned \$17,602; monthly bills for utilities, insurance, mortgage and bank statements; and a copy of the bill of sale for two cars. The mortgage statement shows that the applicant and his spouse pay \$752.04 as their monthly mortgage payment and \$181.83 for their monthly condominium assessments.

The record also contains a table of Gross National Income (GNI) per capita for 2004 from the World Development Indicators database showing that Poland's GNI per capita in 2004 was \$5,270, as compared to \$37,610 in the United States \$37,610. In addition, the record includes the Central Intelligence Agency's World Fact Book information for Poland stating that although Poland has liberalized its economy, much still needs to be done especially in bringing down unemployment.

The AAO recognizes that the applicant's spouse will experience hardship as a result of being separated from the applicant but, the current record does not demonstrate that this hardship rises to the level of extreme hardship. Emotional hardship is a common result when one family member is removed from the United States and the applicant's spouse has not shown why her situation would rise to the level of extreme hardship. The AAO notes the evidence submitted with regard to income disparities between the United States and Poland and acknowledges that the applicant's income will likely be diminished in Poland as compared to the United States. However, the applicant's spouse has not shown that she would not be able to find employment in the United States to support her family and/or that her family in the United States would not be willing and able to help her in the applicant's absence.

Moreover, the record does not support a finding that relocation would be an extreme hardship for the applicant's spouse. The applicant's spouse lived in Poland until she was in high school, the applicant's family is in Poland, he is trained as a carpenter and nothing in the record indicates that as a trained carpenter he would not be able to find employment in Poland. In addition, the applicant has not shown that the emotional hardship she would face by being separated from her family in the United States rises to the level of extreme hardship. Thus, the AAO finds that the applicant has not established that his spouse would suffer extreme hardship as a result of his inadmissibility.

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. The AAO notes that the record contains affidavits from family members and a letter from the pastor at the applicant's church attesting to his good character. However, 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) 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.