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U.S. Citizenship and Immigration Services
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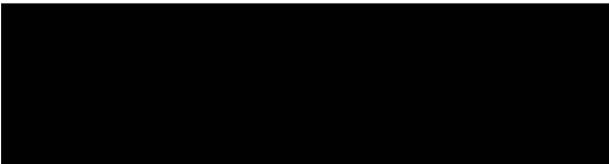
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FILE: [REDACTED] Office: Chicago, Illinois Date: JUL 01 2009

IN RE: Applicant: [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 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).

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 his spouse.

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 November 1, 2006.

On appeal, counsel states that U.S. Citizenship and Immigration Services (“USCIS”) erred in finding that the applicant had failed to demonstrate that his spouse would suffer extreme hardship if he 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 USCIS failed to give sufficient weight to a psychological evaluation of the applicant’s wife stating that she is suffering from major depression and severe anxiety and erred in dismissing the diagnosis and the potential effects of the applicant’s deportation as a common result of deportation. *Brief in Support of Appeal* at 6. Counsel further contends that the applicant’s wife would suffer financial hardship if the applicant were removed because she relies on the applicant’s income to pay their expenses and she would be unable to meet their financial obligations without his income. *Brief* at 7. She further states that the applicant would be unlikely to find employment in Poland and they would not have sufficient income to support two households, one in the United States and one in Poland. *Id.* Counsel additionally asserts that the applicant’s wife would suffer extreme hardship if she relocated to Poland because she would be separated from her family members in the United States and would have to abandon her home and career. *Brief* at 8-10. In support of the waiver application and appeal, counsel submitted the following documentation: An affidavit from the applicant’s wife, copies of permanent resident cards and naturalization certificates for the applicant’s wife’s relatives in the United States, a psychological evaluation for the applicant’s wife, documentation related to the home they own and the monthly mortgage payment, the applicant’s wife’s diploma and evidence of her employment as an ophthalmic technician, evidence related to the company owned by the applicant, a copy of a 2005 tax return, bank statements and bills, and copies of family photographs. 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.

A waiver of the bar to admission resulting from violation of section 212(a)(6)(C)(i) 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. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings. 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).

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 (9th 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 (9th 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 twenty-nine year-old native and citizen of Poland who has resided in the United States since April 2000, when he was admitted with a fraudulent P1 visa. He married his wife, a thirty-two year-old native of Poland and citizen of the United States, on September 4, 2004. The applicant and his wife currently reside in Elk Grove Village, Illinois.

Counsel asserts that if the applicant were removed from the United States, his wife would suffer emotional and psychological hardship as a result of the separation. *Brief in Support of Appeal* at 6. As evidence of this hardship counsel submitted a letter from [REDACTED] a psychiatrist who evaluated the applicant's wife. The letter indicates that the applicant and his wife met with [REDACTED] on August 26, 2006 and discussed their relationship and their plans to start a family. It further states that the applicant's wife has become "miserable" because of the possible removal of the applicant, and she is horrified at the idea of being separated from the applicant and not being able to raise a family with him. *Letter from [REDACTED] M.D.*, dated August 26, 2006. It further states that she "presents with symptoms that need to be construed as major depression," that the immigration situation of the applicant is the only contributing factor to her developing depression and severe anxiety, and that her mental suffering could be stopped if the applicant were allowed to remain in the United States. *Id.*

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 past diagnosis or history of treatment for any condition such as depression or anxiety. Further, although the letter indicates that the applicant's spouse is suffering from major depression and anxiety, there is no indication that she received any treatment for this condition from [REDACTED] or any other mental health professional. 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. This renders the psychiatrist'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 wife would experience are more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's deportation or exclusion. Although the depth of her distress caused by the prospect of being separated from her husband 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 wife were to remain in the United States without the applicant, she would suffer financial hardship because she would have to support two households and would be unable to meet their financial obligations, including their mortgage payment, in the United States. *Brief in Support of Appeal* at 7. Income tax returns and W-2 forms for 2005 indicate that the applicant earned about \$13,000 and his wife earned about \$32,600, and they reported income of about \$20,000 from the company owned by the applicant. *See U.S. Individual Income Tax return for 2005*. Income tax returns submitted with the applicant's affidavit of support also indicate that the applicant's wife earned about \$31,000 in 2004 and 2003. Evidence on the record establishes that the applicant's wife is employed and supported herself financially before marrying the applicant in 2004. Although the loss of the applicant's income would likely have a negative effect on his wife'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. *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 wife would suffer extreme hardship if she were to relocate to Poland with the applicant due to separation from her family members and the loss of her employment and home in the United States, where she has resided since he was twenty years old. The applicant's wife further states that she has worked hard to become an ophthalmic technician and that she and the applicant have purchased a home and built a life together in the United States. *See Affidavit of* [REDACTED] dated October 10, 2006 at 2. She further states,

Likewise, a separation from my close-knit family here, my parents, sister, and grandmother, would also cause me tremendous sadness and anxiety. I cannot imagine having to be separated from them or my husband, especially in the fragile state of my mental health right now. . . . I could not reasonably relocate to Poland to join my husband if he were to return there. I know that in Poland neither I nor my husband would not (sic) be able to support ourselves and his disabled father. *Affidavit of* [REDACTED]

Although it appears the applicant's wife would experience emotional and financial hardship from having to leave her home and employment in the United States and from separation from her 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 she has resided in the United States for some time, the applicant's wife resided in Poland until she 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 neither she nor the applicant would be able to find work 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)). 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.

It appears from the record that any emotional or financial hardship to the applicant's wife 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 (9th 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 (9th 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).

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 his 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.