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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

Office: VIENNA

Date: JUL 10 2009

IN RE:

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:

SELF-REPRESENTED

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 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 to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I) for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident spouse.

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 the Officer in Charge*, dated December 28, 2006.

In support of the appeal, the applicant's spouse submits a letter, dated February 6, 2007. The entire record was reviewed and considered in rendering this decision.

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

(A)(i) [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, or

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 -

(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

(2) The Attorney General (Secretary), in his discretion . . . has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The record indicates that the applicant was convicted in April 2005 of [Tree] Felling and Theft, based on a January 2005 offense. No prison sentence was imposed. The applicant is eligible for a section 212(h) waiver.

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’s lawful permanent resident spouse contends that she will suffer emotional and financial hardship if the applicant is unable to reside in the United States. She contends that she needs the applicant “because of family issues and financial problems.... I would like to start a family here in U.S. and live here.... Since I would like to study here in Chicago I wouldn’t be able to work.... By not having money my standards of living will be very very low. I will not be able to keep myself up....” *Letter from [REDACTED] dated February 6, 2007.*

It has not been established that the applicant’s spouse will suffer extreme emotional hardship were the applicant unable to reside in the United States due his inadmissibility. In addition, it has not been established that the applicant’s spouse, a native of Poland, is unable to travel to Poland to visit the applicant regularly. 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)). Finally, while the AAO sympathizes with the applicant’s spouse regarding her desire to start a family, all couples separated by removal have to make alternate arrangements if they want to conceive. It has not been documented that such arrangements in this case rise to the level of extreme hardship.

Although the depth of concern and anxiety over the applicant’s inadmissibility 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 exists. 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. 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), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *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); *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). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

As for the financial hardship referenced by the applicant’s spouse, the AAO notes that 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.”).

No documentation has been provided that outlines the applicant’s spouse’s current financial situation, including income, expenses, assets and liabilities, and her financial needs, to establish that without the applicant’s physical presence in the United States, the applicant’s spouse’s financial hardship is extreme. Moreover, no objective documentation has been provided that confirms that the applicant is unable to obtain gainful employment in Poland that would allow him to assist his wife in the United States financially should the need arise. Nor has it been established that the applicant’s spouse is unable to obtain student loans, part-time employment and/or financial assistance, thus allowing her to pursue her studies while supporting herself financially. While the applicant’s spouse may need to make adjustments with respect to her financial situation while the applicant resides abroad due to his inadmissibility, it has not been shown that such adjustments would cause the applicant’s spouse extreme financial hardship. As such, the record fails to establish that the applicant’s spouse’s continued care and emotional and financial 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 abroad based on the denial of the applicant’s waiver request. This criteria has not been addressed. As such, it has not been established that the applicant’s spouse would suffer extreme hardship were she to relocate to Poland, her native country, to reside with the applicant.

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 spouse would suffer extreme hardship if he were not permitted to reside in the United States, and moreover, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant. The record demonstrates that the applicant’s spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. 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.