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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: CHICAGO

Date: **MAY 19 2009**

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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.

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 District Director, Chicago, Illinois, denied the instant waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Poland, the wife of a U.S. citizen, the mother of two U.S. citizen children, and the beneficiary of an approved Form I-130 petition. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and children.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application. On appeal counsel contended that the evidence demonstrates that the applicant's husband would suffer extreme hardship if the application were denied.

Although counsel did not contest the district director's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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.

The record contains a non-immigrant visa Applicant Detail provided by the U.S. Department of State. That document indicates that the applicant obtained a B-2 visa on April 16, 2003 by claiming that she intended to attend a power lifting convention or competition in the United States.

The record also contains additional information provided by the Department of State, showing that, when she applied for her visa, the applicant represented that she was a member of a group of power lifters going to the United States for the World Powerlifting Congress.

The record contains portions of the applicant's passport, which contains the B-2 visa issued to her on April 16, 2003. A stamp on that same page of the passport indicates that the visa was used to enter the United States at Chicago on April 17, 2003. The record also contains a Form I-94 Departure Record that confirms that the applicant was admitted to the United States on April 17, 2003, and indicates that she had permission to remain in the United States until October 15, 2003.

In a sworn statement given before an officer of USCIS, the applicant stated that she entered the United States on April 17, 2003 pursuant to a B-2 visa she obtained in Krakow, Poland. The applicant indicated that she was not a member of any power lifting group, and that she had paid someone \$9,000 to prepare her visa application.

In the brief submitted on appeal, counsel admitted that the applicant misrepresented the purpose of her trip to the United States when she applied for a visa.

The AAO finds that the applicant knowingly misrepresented that she was a member of a group of power lifters coming to the United States to attend a power lifting convention or competition, a material misrepresentation within the meaning of section 212(a)(6)(C)(i) of the Act, and is inadmissible pursuant to that subsection. The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) of the Act provides, in pertinent part:

The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien . . .”

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant’s husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 nonexclusive list of factors relevant to determining whether an alien 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. The BIA has held:

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 record contains an affidavit dated April 5, 2006 from the applicant's brother-in-law, [REDACTED] who noted that the applicant's husband is very happy to be with her, that they have two children, and that the applicant's husband's life has changed for the better. He did not otherwise address the hardship that would be occasioned to the applicant's husband if the waiver application were not approved.

The record contains another affidavit, dated June 9, 2006, from [REDACTED] another brother-in-law of the applicant, who stated that the applicant has changed the life of her husband, the affiant's brother. He further stated that the family is very close and that the applicant's children, whose future will be better if they remain in the United States, need her. He did not otherwise address the hardship that denial of the waiver application would cause to the applicant's husband.

The record contains an affidavit, dated June 9, 2006, from [REDACTED] the applicant's sister-in-law, who stated that the applicant's husband is her older brother, and that the applicant's love and their two children changed his life. She stated that she cannot imagine the applicant and her husband apart, but did not otherwise address the hardship it would cause the applicant's husband.

The record contains another affidavit, also dated June 9, 2006, from another sister-in-law of the applicant. That sister-in-law, [REDACTED], stated that she considers the applicant to be her sister. She further stated that she is godmother of one of the children of her brother and the applicant, and that they are very good parents. She did not otherwise address the hardship that denying the waiver application would cause to the applicant's husband.

The record contains an affidavit, dated June 9, 2006, from the applicant's husband, who described the domestic bliss he shares with the applicant. He stated that he cannot imagine being apart from the applicant and that he would be unable to raise their children alone. He stated that if the waiver application is not granted he would be obliged to go to Poland to live with his wife and children, which would force him to leave the rest of his family, which is in the United States. He also stated that the Polish economy is very poor, and that he and his family would not have employment or a place to stay. He further stated that, although the applicant has two brothers in Poland she would be unable to stay with them because they have their own families.

That the applicant's brothers have families does not necessarily preclude their offering their sister assistance, and the AAO finds that the applicant's family ties in Poland are likely to ameliorate the hardship her spouse would otherwise experience there.

Further, the record contains no support for the assertion that the applicant's husband, or the applicant, would be unable to find employment in Poland. Although the statements by the applicant, her husband, and the other affiants are relevant evidence and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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 record contains an affidavit from the applicant. In it, she apologized for her immigration violation and stated that her children would suffer if she were forced to leave the United States. She stated that her husband's time is largely dedicated to his work and he would be unable to care for the children alone. She further stated that she has no financial resources in Poland and that her husband would be unable to maintain his home in the United States while supporting her in Poland. The applicant provided no evidentiary support for her assertion that her husband would be unable to support her in Poland while working in the United States, and did not address the possibility of her finding employment in Poland.

Again, statements of the affiants in this matter are relevant evidence, but as per *Matter of Soffici, supra*, are accorded little weight and are insufficient, absent evidentiary support, to sustain the burden of proof.

In the brief submitted on appeal, counsel stated that the applicant is the primary caregiver for the children she has with her husband, and stated that the children are therefore very dependent on the applicant. Counsel stated that the applicant's husband depends on the applicant for emotional support as well as childcare.

Counsel noted that the applicant's husband's parents and siblings all live in Illinois and are all U.S. citizens or permanent residents. Counsel observed that, therefore, if the applicant's husband accompanies the applicant to Poland, he would be leaving his parents, who have health problems, and his siblings.

The AAO notes that the applicant's husband's siblings' affidavits indicate that they all live in Summit, Illinois, as does the applicant's husband. The record does not show that the applicant's parents will lack proper care in the applicant's husband's absence, and that his separation from his family will result in extreme hardship to them when combined with other hardship factors.

Counsel further observed that, if the applicant is forced to leave and her husband remains in the United States, he would be separated from the applicant, whom he and his children love and upon whom he and his children are dependent for "daily life tasks" and "emotional support." Counsel noted that, if the applicant is removed to Poland, her husband would be obliged either to be separated from his children or to separate them from their mother.

As to the applicant's husband's ties to Poland, counsel stated,

[The applicant's husband] does not have ties to Poland any longer. When he immigrated to the United States, he came together with all of his family members. [sic] The only family members he has back in Poland are uncles and cousins who [sic] [the applicant's husband] hardly knows any longer. All of his immediate relatives and the majority of his family members are here in the United States.

The AAO does not dismiss, as readily as does counsel, the possibility that the applicant's husband's extended family in Poland might help him to obtain lodging and employment and provide him other assistance. The only support for the proposition that they would be unable or unwilling to offer support is counsel's assertion.

The assertions of counsel are not evidence and thus are not entitled to any evidentiary weight. See *INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980). Unsupported assertions of counsel are, therefore, insufficient to sustain the burden of proof.

Counsel noted that the *per capita* income in Poland is much lower than in the United States. Counsel also stated that, because Poland has high unemployment, the applicant's husband would be unlikely to find employment that pays as well as his heating and air conditioning business in the United States, and noted that the applicant's husband declared total income of approximately \$172,000 during 2005. Counsel provided income tax returns to support his statement of the applicant's husband's income. Counsel stated, "[The applicant's husband] has no immediate job prospects in Poland," but did not indicate that the applicant's husband had made any attempt to locate employment there.

That the applicant's husband's income might be less in Poland than in the United States is not controlling. The inability to maintain one's present standard of living does not necessarily constitute extreme hardship. See *Matter of Pilch*, 21 I&N Dec. 627, 631 (BIA 1996).

Counsel stated that, if the applicant is obliged to leave the United States, whether or not the children accompany her, the applicant's husband would be obliged to support two households, one in the United States and the other in Poland. Counsel stated that supporting two such households is "a feat that would cause hardship to most individuals," but did not demonstrate that it would cause hardship to the applicant's husband, whom counsel has shown has a very substantial income. Further, counsel did not address the possibility that the applicant might be able to support herself in Poland.

Further still, the record shows that the applicant's husband is a heating and air conditioning mechanic. The record contains no supporting evidence that employment would not be available to the applicant's husband in Poland, but only the assertions of counsel and the affiants.

Counsel further noted that the applicant and her husband are able to afford medical insurance in the United States for themselves and their children, and stated that they would be unable to afford the same level of medical care in Poland. Counsel stated, but provided no evidence to support, that in

Poland the applicant and her husband would no longer be able to ensure medical coverage for their children, especially in the small town where the applicant's husband grew up.

The record contains no indication that quality medical care for the applicant's children, if they accompanied their mother to Poland, would be unavailable or unaffordable. Again, the assertions of counsel are not evidence, are not entitled to any evidentiary weight, and are insufficient to sustain the burden of proof. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Further, the AAO notes that if the waiver application were denied, the applicant and her husband would not be obliged to live in any particular location in Poland.

Counsel asserted that, if the applicant is obliged to go to Poland and her children remain in the United States with the applicant's husband, the applicant's husband will necessarily incur considerable child care expense, which would constitute a hardship. On the affidavits submitted, as was noted above, all of the applicant's husband's siblings state that they live in Summit, Illinois and are emotionally a very close family. Counsel did not address the possibility that one or more of the applicant's husband's siblings or one of their family members might be able to assist the applicant's husband in that regard. Yet again, the assertions of counsel are not evidence, are not entitled to any evidentiary weight, and are insufficient to sustain the burden of proof. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The record contains a printout of a report on Human Rights Practices in Poland during 2005. Counsel provided no argument pertinent to the contents of that report. That report notes some flaws in Poland's human rights record, but does not show that Poland has unusually poor conditions. Counsel has not demonstrated, nor even suggested, that any flaws in Poland's human rights record would have any effect on the applicant or her family.

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 husband faces extreme hardship if the applicant is refused admission. Rather, the record suggests that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor 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 affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than 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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits 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 rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.