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[REDACTED]

FILE: [REDACTED] Office: FRANKFURT, GERMANY Date: **NOV 17 2009**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v),
8 U.S.C. § 1182(a)(9)(B)(v), of the Immigration and Nationality Act.

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge (OIC), Frankfurt, Germany, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Poland who was found to be inadmissible to the United States under section 212(a)(9)(B)(i)(II), of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year.

The applicant is the spouse of [REDACTED] a naturalized citizen of the United States. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), of the Act in order to immigrate to the United States. The OIC concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the OIC*, dated April 24, 2007. The applicant submitted a timely appeal.

On appeal, counsel states that the OIC failed to give sufficient weight to the applicant's wife's psychological and physical condition and to properly consider all of the facts. Counsel states that the applicant's wife developed health problems after her husband's deportation, and the gravity of her health problems should not be diminished or excluded in the hardship determination because they developed after her husband's deportation. Counsel states that the OIC failed to give sufficient weight to financial hardship to [REDACTED] if she remained in the United States without her husband. He states that [REDACTED] needs her husband's income and cannot support her two U.S. citizen children without it because [REDACTED] does not work. Counsel conveys that the applicant has had difficulty supporting his family as he has not been able to find work in Poland and had to **relinquish his construction business in the United States.** Counsel states that [REDACTED] has a lawful permanent resident mother and a U.S. citizen sister, who is her only sibling, and has grandparents, aunts, uncles, and cousins who are either lawful permanent residents or citizens of the United States and live **nearby [REDACTED]** Counsel states that [REDACTED] has no relatives in Poland. Counsel states that [REDACTED] has a **close relationship** with her mother and sister and sees them nearly every day. Counsel conveys that [REDACTED] children would be uprooted from their life in the United States and taken to a foreign country away from everyone they know if they joined their father in Poland, and that [REDACTED] would experience hardship as a result of a negative impact on her children's welfare and education. Counsel states that English is the first language of [REDACTED] children and is the language of their educational instruction. He states that it would be a hardship to [REDACTED] to take her children to live in Poland, where they are unfamiliar with the language, education, and culture and lack family members. Counsel states that [REDACTED] has strong ties to the United States, where she has lived for over 11 years and is involved in the community

The AAO will now address the finding of inadmissibility.

Inadmissibility for unlawful presence is found under section 212(a)(9)(B)(i) of the Act. That section provides, in part:

(B) Aliens Unlawfully Present

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and again seeks admission within 3 years of the date of such alien's departure or removal, or

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

U.S. Citizenship and Immigration Services (USCIS) records reflect that on October 5, 1997 the applicant entered the United States without inspection in Texas and was apprehended by a U.S. Border Patrol Agent. The applicant was placed in removal proceedings under section 240 of the Act. In February 1998, the immigration judge granted him voluntary departure on or before June 11, 1998, with an alternate order of deportation. The applicant's spouse filed an immediate relative petition on his behalf. That petition was approved on October 2, 2006. On April 11, 2006, the applicant was deported to Poland. He therefore accrued eight years of unlawful presence, from June 11, 1998 until April 11, 2006, and triggered the ten-year-bar when he left the United States, rendering him inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II).

The waiver for unlawful presence is found under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v). That section provides that:

(v) Waiver. – The Attorney General [now Secretary, Homeland Security, “Secretary”] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The waiver under section 212(a)(9)(B)(v) 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 an applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(a)(9)(B)(v) of the Act. Thus, hardship to the applicant and his children will be considered only to the extent that it results in hardship to a qualifying

relative, who in this case is the applicant's naturalized citizen spouse. Once extreme hardship is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). *Matter of Cervantes-Gonzalez* lists the factors considered relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors relate to an applicant's qualifying relative and include 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. *Id.* at 565-566.

The factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). The trier of fact considers the entire range of hardship factors in their totality and then determines "whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to [REDACTED] must be established in the event that she remains in the United States without the applicant, and alternatively, if she were to join the applicant to live in Poland. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

In her affidavit, [REDACTED] describes the emotional and financial hardships she has experienced since separation from her husband. She describes herself as having major depression and severe anxiety, as developing amenorrhea (a lack of menstruation), as losing weight and having difficulty sleeping, and as having crying spells and panic attacks since separation from her husband. She conveys that her mother and sister are helping to take care of her children and are paying her mortgage, and providing her and her children with emotional support since her husband's absence. She states that since her husband returned to Poland and lost his business she has had to work part-time cleaning houses at night while her mother watches her children. [REDACTED] conveys that her husband was not able to complete all of the jobs he started at his construction business before his deportation and people are asking for money back on unfinished jobs and that she has tried to repay them. She states that her lack of menstruation is caused by depression and she indicates she was prescribed Zoloft 100mg to be taken daily. She states that a psychologist is treating her for depression and an anxiety disorder. [REDACTED] states that her husband cannot find a job in Poland and that because of her limited education and work experience she was able to obtain temporary part-time work cleaning houses for \$250 per week, which income, she states, is not enough to support herself and her children, who were born on July 18, 1999 and June 20, 2002.

mother, [REDACTED] describes in an affidavit her concern about her daughter. She conveys that she provides financial assistance to her daughter and takes care of her daughter's children while her daughter works. [REDACTED] states that she and [REDACTED] her daughter, live 15 minutes away from [REDACTED] and are very close to her, and that [REDACTED] parents [REDACTED] (grandparents) live with her in Chicago.

The psychological evaluation dated May 2, 2006 by [REDACTED] states that various tests administered by [REDACTED] convey that [REDACTED] is emotionally unstable and on the verge of a psychotic episode, with introvert features; she experiences very high levels of fear and her levels of anger, depression, and fear are higher than others tested using the scale. [REDACTED] states that [REDACTED] has symptomatology of an Acute Stress Disorder. [REDACTED] diagnosed [REDACTED] with Generalized Anxiety Disorder and Severe Stress Reaction Secondary to Husband's Deportation.

With regard to [REDACTED]'s health since separation from her husband, [REDACTED], a family practitioner, states in a December 4, 2006 letter that [REDACTED] is under her care; she continues to take Zoloft 100mg once daily for depression and that "she has also been unsuccessfully treated for her depression by [REDACTED]"

In a letter dated May 30, 2007, [REDACTED] states that [REDACTED] continues to be under [REDACTED] care for severe reactive stress and major depression, which has caused amenorrhea, secondary to spousal separation. [REDACTED] states that [REDACTED] continues to take Zoloft 100mg daily for depression and "[REDACTED] is also continuing to treat her depression, without success."

Regarding financial hardship, the record shows that [REDACTED] home loan is \$849 each month, and the letter dated November 29, 2006, by the president of Euro Quality Services, Inc., reflects that [REDACTED] has been a part-time employee earning \$250 weekly since May 2006. [REDACTED] conveys that her mother and sister are financially assisting her in paying bills and her mother confirms that she is providing financial assistance.

Family separation must be considered in determining hardship. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) ("the most important single hardship factor may be the separation of the alien from family living in the United States").

However, courts have found that family separation does not conclusively establish extreme hardship. *See, e.g., Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991) (separation of the applicant from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission") (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (finding separation of respondent from his lawful permanent resident wife and two U.S. citizen children is not extreme hardship); and *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985) (deportation is not without personal distress and emotional hurt).

With record here, the AAO finds that the evidence of [REDACTED] psychological evaluation, the letters by [REDACTED] and the affidavit by the applicant and by her mother collectively establish that [REDACTED] has experienced, and will continue to experience, extreme hardship if she were to remain in the United States without her husband.

[REDACTED] expresses concern about the education of her children in Poland. She indicates that her children, who are now 7 and 10 years old, have a limited knowledge of the Polish language and it would be detrimental to their education to disrupt their studies in the United States and start a new school in a foreign country with instruction in a new language. She states that her children prefer to speak English at home and their school instruction and advanced vocabulary is in English. She states that they are good students and enjoy their classes, teachers, friends, and activities and have lived their entire lives in the United States. The record contains school records of the applicant's children. Although hardship to the applicant's children is not a consideration under section 212(a)(9)(B)(v) the Act, the hardship endured by his wife, as a result of her concern about the welfare of her children, is a relevant consideration. However, the applicant has not established how extreme hardship to his children would result in extreme hardship to his wife.

[REDACTED] conveys that she would experience extreme hardship if separated from her mother and sister, and grandparents. However, [REDACTED] would not be alone in Poland; she would be with her husband, children, and in-laws.

Although [REDACTED] states in her affidavit that her husband cannot find a job in Poland, there is no documentation in the record demonstrating that [REDACTED] and her husband will be unable to obtain employment in Poland. 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)).

In considering all of the hardship factors presented, both individually and in the aggregate, the AAO finds they do not demonstrate that the applicant's spouse would experience extreme hardship if she were to join her husband to live in Poland.

It is thereby concluded that a waiver of inadmissibility for purposes of relief under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), is not warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.