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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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H₂

FILE:

OFFICE: PITTSBURGH

Date:

OCT 26 2009

IN RE: Applicant:

APPLICATION:

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

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Pittsburgh, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of Poland, was admitted to the United States with a valid nonimmigrant temporary visitor visa on May 8, 1999, with authorization to remain until November 7, 1999. She subsequently obtained an extension of stay, valid until May 7, 2000. She did not depart the United States until March 2003. She was thus found to be inadmissible to the United States pursuant to 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.¹ The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The field office director referenced that extreme hardship had not been established, concluded that the positive factors present in the record did not warrant favorable use of discretion, and denied the Form I-601 accordingly. *Decision of the Field Office Director.*

In support of the appeal, counsel for the applicant submitted a brief, dated August 15, 2007 and referenced exhibits. In addition, on November 18, 2008, the AAO received additional documentation in support of the instant appeal. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9)(B)(i)(II) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

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

(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.

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an

¹ The applicant does not contest the field office director's finding of inadmissibility. Rather, she is requesting a waiver of inadmissibility.

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...

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. The factors 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.

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).

The applicant's U.S. citizen spouse contends that he will suffer emotional hardship if the applicant is removed from the United States. He contends that he needs his wife's support on a day to day basis, to run the household and help care for his children from a previous marriage. *Statement of Extreme Hardship of* [REDACTED] In support of the emotional hardship referenced by the applicant's spouse, a letter has been provided by the applicant's spouse's treating physician, confirming that the applicant's spouse has a history of anxiety disorder. *Letter from* [REDACTED], dated July 12, 2007. The applicant's spouse further notes that he will suffer extreme physical hardship were the applicant to reside abroad, as he suffers from numerous medical conditions, including diabetes, and thus needs the applicant to care for him and ensure that he follows his doctor's orders. *Letter from* [REDACTED] dated October 28, 2008.

The AAO notes that the letters provided by the applicant's spouse's treating physician make no reference to the severity of the applicant's spouse's current medical and mental health situation, the short and long-term treatment plan, and the critical nature of the applicant's presence to her spouse's health. It has thus not been established that were the applicant removed from the United States, any alternate arrangements for the applicant's spouse's daily care would cause him extreme hardship. In addition, it has not been established that the applicant's spouse would be unable to travel to Poland, his home country, on a regular basis to visit the applicant. Although the applicant's spouse contends that he does not have the financial means to travel back and forth to Poland while maintaining two households and moreover, his doctor has advised him not to fly as flying worsens his conditions, no

documentation has been provided to substantiate the assertion. Nor has it been established that the applicant is unable to obtain gainful employment in Poland, thereby assisting with the family's finances. 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, it has not been established that the applicant's spouse's children will suffer extreme hardship due to the applicant's inadmissibility, thereby causing hardship to the applicant's spouse, the only qualifying relative in this case.

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 and familial and emotional bonds exist. 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).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided, it has not established that the applicant's spouse will suffer extreme hardship were the applicant's waiver request denied.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. The applicant's U.S. citizen spouse contends that he has physical custody of his son, born in 1991 and his ex-wife has physical custody of his daughter, born in 1997; both parents have visitation rights. He notes that were he to relocate abroad, his children would have to remain in the United States, as he is unable to take the children away from their mother and/or from each other. Thus, were he to relocate abroad due to his spouse's inadmissibility, he would not be able to continue in his role as primary caregiver to his son, who he has cared for primarily for over five years, and he would not be able to see his daughter regularly. *Supra* at 1. A copy of the Order of Court, relating to custody, has

been provided to corroborate the applicant's spouse's assertions regarding the custodial arrangement with his ex-wife.

Alternatively, were the applicant's spouse's ex-wife to grant permission for their son to reside abroad with his father, the applicant's spouse asserts that his son would suffer financially, as Poland has a substandard economy, and he would suffer emotionally, as he doesn't speak the native language of Poland, he would be separated from his mother and sister, and he would have to forego his plans to attend a U.S. college. In addition, his daughter would suffer hardship as she would not be able to see her father and/or brother regularly. The applicant's spouse contends that the hardships referenced above with respect to a relocation abroad and the impact on his children would cause hardship to him, the only qualifying relative in this case.

Furthermore, the applicant's spouse notes that he has been under medical care for over 9 years for his medical and mental conditions and a relocation abroad would mean he would suffer hardship as he would no longer be treated by physicians familiar with his condition and moreover, the stress and anxiety he would encounter due to his relocation would worsen his mental health condition. Finally, the applicant's spouse contends that he will suffer career/professional disruption. As he states, "I was not educated at the college or university level and I do not have a vocation. I have managed to succeed in the United States by working hard in a cleaning/housekeeping service and have worked for myself for several years. It has taken me time to get solid clients and contracts. If I have to leave to go to Poland, I would lose it all and would not be able to make the same income in Poland to provide for my family members in Poland and the United States.... The sacrifices I made to get my business going and profitable for someone like me with English as a second language and limited education has been tremendous.... The Service has given me no credit for the years of hard work and the ability to sustain my family in a medical class lifestyle...." *Supra* at 3-4.

Based on the concerns outlined above regarding the applicant's spouse's children's inability to relocate to Poland to be with their father due to the custody agreement between the applicant's spouse and his ex-wife, the medical hardships he would face due to the fact that his anxiety may worsen due to the relocation and he would not be treated by physicians familiar with his medical and mental health conditions, the financial hardship the applicant's spouse would face due to the substandard economy in Poland and his career and professional disruption, the AAO concludes that the applicant's U.S. citizen spouse would experience extreme hardship were he to accompany the applicant to Poland based on her inadmissibility.

A review of the documentation in the record, when considered in its totality reflects that although the applicant has established that his U.S. citizen spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant, the applicant has failed to show that her U.S. citizen spouse would suffer extreme hardship were he to remain in the United States while the applicant resides abroad due to his inadmissibility. 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(a)(9)(B)(v) 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.