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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H2

[redacted]

Date: OCT 0 7 2011 Office: ROME, ITALY FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h), and section 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Goleman

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Rome, Italy. 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 who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), and section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated May 14, 2009.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, [redacted] indicating they were married on October 2, 2007; a copy of the couple's U.S. citizen son's birth certificate; a letter and an affidavit from the applicant; a letter and an affidavit from [redacted] a letter from [redacted] parents; a declaration from counsel; letters from [redacted] physician; a letter from [redacted] brother's physician; copies of [redacted] certificates and degrees in medicine and surgery; a copy of the U.S. Department of State's Country Specific Information for Poland; articles and background materials on Italy; copies of bank statements and checks; a letter from the applicant's employer; copies of court documents addressing the applicant's convictions; and an approved Petition for Alien Relative (Form I-130).

Section 212(a)(2)(A) of the Act states in pertinent part:

> (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 . . . is inadmissible.

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

> (h) 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 -

> (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that --
>
> > (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
> >
> > (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
> >
> > (iii) the alien has been rehabilitated.
>
> (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 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 . . . .

In this case, the record shows, and the applicant concedes, that in 1994, he was arrested and convicted of burglary, and that in 1995, he was again arrested and convicted of burglary. In addition, in 1999, the applicant was arrested and fined for smuggling cigarettes and alcohol into Poland, and in 2004, the applicant was against arrested and convicted for smuggling cigarettes into Poland. *Application for Waiver of Grounds of Inadmissibility (Form I-601), Attachment*, dated December 9, 2008. Counsel concedes that burglary is a crime involving moral turpitude. *Memorandum of Law in Support of Motion to Reopen and Reconsider and/or Appeal of Denial of Application for Waiver*, dated June 11, 2009, at 11. Therefore, the AAO finds that the applicant is inadmissible under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), for having committed a crime involving moral turpitude.

The field office director evaluated the applicant's waiver application for extreme hardship to a qualifying relative under section 212(h)(1)(B) of the Act because the most recent crime which rendered the applicant inadmissible occurred in 1995, less than 15 years from the date of the field office director's decision. However, because more than fifteen years have now passed, the applicant has shown that he is eligible for consideration of a waiver under section 212(h)(1)(A) of the Act. Nonetheless, as explained below, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit and has not demonstrated eligibility for a waiver under section 212(i) of the Act. Therefore, the AAO will not determine whether the applicant is eligible for a waiver under section 212(h)(1)(A) of the Act or whether the applicant's more recent convictions are crimes involving moral turpitude.

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.

Section 212(i) provides:

> (1) 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.

The record shows that on March 1, 2008, and on September 5, 2008, the applicant submitted nonimmigrant visa applications to the American Embassy in Italy. The applicant answered "no" in response to the question, "[h]ave you ever been arrested or convicted for any offense or crime, even though subject of a pardon, amnesty or other similar legal action?"

The applicant contends he is not inadmissible. According to the applicant, he was "under the assumption that [his] certificate of annulment had been approved." The applicant contends that he was informed, and that it is common knowledge in Poland, that if he has a certificate of annulment, he does not have to claim he was ever arrested. The applicant contends he was unaware that the certificate had not been approved until after his visa interview. He states that it was not approved because he still owed a fine of which he was unaware. The applicant further states that during his second interview, he again asserted that he had no arrests or crimes because he had been told by his attorney that he could do so. According to the applicant, "[t]his was based on the assumption that the certificates would go through as there were no circumstances that would lead to a denial . . . ." In addition, the applicant states that he never had anything to hide from U.S. authorities, that he was fully prepared to explain everything, but that he was not provided with the opportunity to explain. Furthermore, the applicant states he gave all of his documents, such as police and court records, to Embassy personnel, that his previous lawyer no longer has copies, that the police and court in Poland have destroyed them, and that this was not his fault. *Affidavit of* [redacted] dated June 11, 2009; *see also Letter from* [redacted] ated November 5, 2008 (stating that he "was assured by the officials and lawyer in [Poland] that the incident had been cleared from [his] record.").

A declaration from the applicant's current attorney states that in an effort to understand what may be considered common knowledge about how crimes are dealt with when they are excused or annulled in Poland, he spoke with an attorney in Poland. According to counsel, the Polish attorney stated that "when a crime is committed, one applies for a certificate and in five (5) years that crime is annulled." Counsel states that the Polish attorney reported that if someone receives a certificate, that person has the right to state that the crime had never occurred, "as if it had never taken place." In addition, the Polish attorney purportedly stated that the goal of the Polish government is to offer people a fresh start once they have paid for their mistakes. Counsel contends that the applicant thought he had received the certificate when, in fact, he had not. *Declaration of* dated June 11, 2009. Therefore, according to counsel, the applicant did not knowingly, intentionally, or deliberately make a false statement. Counsel further contends that any misrepresentation was not material because the applicant's nonimmigrant visa applications were denied because Embassy staff determined the applicant was ineligible for such a visa as he was actually an intending immigrant. *Memorandum of Law in Support of Motion to Reopen and Reconsider and/or Appeal of Denial of Application for Waiver, supra*, at 14-18.

The AAO finds the applicant's and counsel's contentions unpersuasive. The Act clearly places the burden of proving eligibility for entry or admission to the United States on the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361 ("Whenever any person makes application for a visa or any other document required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to establish that he is eligible to receive such visa or such document . . . ."). Furthermore, it is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In this case, the applicant contends that "[he] was informed, and that it is common knowledge in Poland, that if [he] ha[s] a certificate of annulment[, that he] do[es] not have to even claim the arrest." According to counsel, a Polish attorney informed him that "one applies for a certificate and in five (5) years that crime is annulled." Significantly, the applicant does not contend he ever applied for, much less receive, a certificate of annulment for any of his convictions. Moreover, the applicant's last conviction was in 2004, which was within five years of the applicant's 2008 visa applications. Therefore, the applicant's 2004 conviction did not qualify for a certificate of annulment when the applicant applied for a visa. Accordingly, the applicant had no reasonable belief that he could accurately assert that all four of his prior arrests and convictions had never taken place.

The applicant contends that "[he] had again mentioned that [he] had no arrests or crimes as [he] had been told [he] could do by [his] attorney." *Affidavit of* *supra.* The record shows that the applicant was not represented by an attorney in Poland, but rather, was assisted by a law firm located in the United States, which prepared both his September 2008 nonimmigrant visa application and his immigrant visa application. *Nonimmigrant Visa Application*, dated September 5, 2008 (stating the application was prepared by Attorneys of Record, in

Los Angeles, California); *Application for Immigrant Visas and Alien Registration*, dated September 5, 2008 (stating that assisted the applicant in completing the application); *Notice of Entry of Appearance as Attorney or Representative (Form G-28)*, dated August 4, 2008 (naming Moreover, this same law firm, whose letterhead describes the firm as an "Exclusive Immigration Practice," assisted the applicant with filing his waiver application. *Application for Waiver of Grounds of Inadmissibility (Form I-601)*, dated November 21, 2008; *Brief in Support of I-601 Waiver*, dated November 21, 2008. Neither the applicant nor the applicant's current attorney claims to have contacted this law firm or either of the applicant's previous attorneys. There is no evidence the applicant has filed a grievance or complaint against his previous attorney who, despite being an immigration attorney, purportedly told him that he could claim he had never been arrested or convicted of a crime.

Regarding counsel's contention that any misrepresentation was not material because the applicant's nonimmigrant visa applications were denied because Embassy staff determined the applicant was ineligible for such a visa as an intending immigrant, section 212(a)(6)(C)(i) of the Act includes any alien who "seeks to procure (or has sought to procure or has procured)" by fraud or willful misrepresentation of a material fact any benefit under the Act. Therefore, even if the applicant's nonimmigrant visa applications were never adjudicated, the fact that the applicant sought to procure a visa, other documentation, or admission into the United States by fraud or willful misrepresentation of a material fact renders the applicant inadmissible. In any event, the record shows that the applicant's immigrant visa application contained the same misrepresentation as his nonimmigrant visa applications. On his immigrant visa application, the applicant also answered "no" in response to the question, "[h]ave you ever been charged, arrested or convicted of any offense or crime?" and denied having been convicted of a crime involving moral turpitude. *Application for Immigrant Visa and Alien Registration*, dated September 5, 2008. Under these circumstances, the AAO finds that the applicant has not met his burden in showing he is not inadmissible. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[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) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In this case, the applicant's wife, [redacted] states that she was born in California and is currently living in Italy. [redacted] states that she was studying medicine in Italy when she met the applicant who was living in England. She contends they married in Italy and then lived and worked in England while waiting for the applicant's visa to move to the United States. [redacted] states that she was pregnant and went back to California to live with her parents and that her husband returned to Poland to live with his parents while he waited for his visa. She claims she had severe depression and anxiety after learning her husband's visa application had been denied. According to [redacted] her midwife

ordered bed rest because of the risk of preterm labor due to her depression and anxiety. states that her son was born without any complications and that when he was a month old, they moved to Italy to be with her husband. She contends her parents have been financially supporting them, giving them over $27,000 to cover living expenses and the costs involved with the birth of her son. She also contends that her parents supported her financially during six years of medical school. states that her parents cannot continue to support her family forever. In addition, contends she has paid approximately $10,000 to take exams in order to practice medicine in the United States. She states she has spent considerable time and money to become a doctor which may be completely wasted because, according to it is unlikely she will be able to work as a doctor in Italy or Poland. Furthermore, states she cannot move to Poland to be with her husband because she does not speak Polish and, therefore, cannot pursue her career as a doctor there. She also contends Poland is a very poor country with a very high cost of living and few jobs. Similarly, contends they cannot stay in Italy because her husband does not speak Italian and there is a high unemployment rate. She contends that medical jobs are often based on connections and that funding is extremely limited. She also contends that even if she found a medical job in Italy, she would have no one to leave her son with while she works. states that her father paid a $20,000 down payment on property in California to give to her as a gift and that and her husband plan to build a home on the property. She contends she is very close with her family, all of whom live in the United States. She states she fears her severe depression and anxiety would return if she moved back to the United States without her husband. Furthermore, states that the political environment in Italy is unstable and that organized crime is a paralyzing reality. *Affidavit of* dated June 11, 2009; *Letter from* ted November 12, 2008.

A letter from physician states that he evaluated her on October 18, 2008, for severe depression and anxiety. According to the physician, was 32 weeks pregnant and was worried about her husband not coming to the United States in time for the delivery of their baby. The physician contends would highly benefit from her husband's presence. , dated October 21, 2008. A letter from a certified nurse midwife states that was put on bed rest on October 14, 2008, due to a high risk of preterm labor. The midwife contends that needs daily living care and emotional support from her husband. dated November 6, 2008.

A letter from parents states that their daughter and the applicant lived in Great Britain waiting for the applicant's visa. According to parents, the year in Great Britain caused their daughter and son-in-law great emotional hardship, being separated from friends and family and taking unpaid jobs because they were foreigners. parents contend that when their daughter returned to the United States during her second trimester of pregnancy, she was in great distress emotionally and physically without her husband. dated October 17, 2008.

After a careful review of the record, there is insufficient evidence to show that will suffer extreme hardship if her husband's waiver application were denied. The AAO recognizes that will suffer hardship as a result of the denial of the application and is sympathetic to the family's

circumstances. However, if decides to return to the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding the emotional hardship claim, the letters from physician and midwife do not show that situation is unique or atypical compared to others in similar circumstances. With respect to the letter from physician, there are insufficient details in the letter to make conclusions regarding mental health. For instance, the letter states that "evaluated on October 16, 2008, for severe depression and anxiety (309.28)." Although the input of any medical professional is respected and valuable, the letter appears to be based on a single visit conducted with and does not indicate how the physician concluded that has severe depression and anxiety. Moreover, the letter does not address the prognosis or treatment, if any, requires aside from contending that she would "highly benefit from her husband's support and physical presence in the United States." Furthermore, the record does not contain any information addressing whether is a mental health professional. In addition, both the letter from midwife conclude only that would benefit from her husband's support. There is no allegation that the applicant's situation is unique or atypical compared to other individuals separated as a result of inadmissibility or exclusion. *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).

To the extent the applicant makes a financial hardship claim, there is insufficient evidence showing that hardship would be extreme. The record shows that is a physician. She does not contend she could not practice medicine in the United States and, in fact, states that she plans on taking the United States Medical Licensing Examination so that she can apply for a residency program in the United States and specialize in Family Practice. In addition, the applicant's parents have provided significant financial support to for many years. Although contends that they cannot financially support her indefinitely, parents do not contend in their letter that they are unable or unwilling to continue financially assisting their daughter.

Furthermore, the record does not show that would suffer extreme hardship if she were to remain in Italy, relocate to Poland, or relocate to England to avoid the hardship of separation. The record shows that has lived in Italy for more ten years, obtained her medical degree in Italy, married the applicant in Italy, and has lived with her husband and their son in Italy since January of 2009. *Biographic Information form (Form G-325A)*, dated April 29, 2008 (stating lived in Italy from September 1995 until January 2007). contentions that it would be difficult to obtain a medical job in Italy, that her husband does not speak Italian, that she does not have anyone she could leave her son with if she found a job, and that the political environment is unstable, are unpersuasive. concedes that her parents supported her during six and one-half years of medical school in Italy and that they gave her thousands of dollars for living expenses in Italy. She does not describe what efforts, if any, she and her husband have made to find employment in Italy. In addition, although has lived in Italy for more ten years, she does not contend she has had any problems with crime or the political environment in Italy. Although the record contains articles

addressing conditions in Italy, none of the articles suggest that living in Italy poses an extreme hardship and the U.S. Department of State describes Italy as a developed democracy with a modern economy and a moderate rate of crime. *U.S. Department of State, Country Specific Information, Italy*, dated June 02, 2011.

Similarly, the record does not show that relocating to Poland or England poses an extreme hardship on The record shows that is currently thirty-one years old and she does not claim that she suffers from any medical or mental health condition that would make her adjustment to living in Poland any more difficult than would normally be expected. The record also shows that the applicant's parents continue to live in Poland and, therefore, Ms. Chirco would have family in Poland. Likewise, relocating to England, where previously lived, would not pose an extreme hardship based on the record. *Biographic Information form (Form G-325A), supra* (stating lived in the United Kingdom from October 2007 to the present). contends she had already submitted an application for registration with the General Medical Council in England and had been accepted. In addition, she states that her husband worked in a distribution center in England and she worked at in England. Considering all of the evidence in the aggregate, the record does not show that relocation to Italy, Poland, or England to avoid the hardship of separation from her husband would be any more difficult than would normally be expected under the circumstances. In sum, the record does not show that hardship would be extreme or that her situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS, supra.*

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility remains entirely with the applicant. *See* 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.