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



U.S. Citizenship
and Immigration
Services



H2

DATE: **AUG 01 2012**

OFFICE: VIENNA, AUSTRIA

FILE: 

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:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

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

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 committed a crime involving moral turpitude. The applicant is married to a lawful permanent resident and the father of four lawful permanent residents. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his spouse.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would result in extreme hardship for a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated January 11, 2010.

On appeal, the applicant's spouse asserts that the denial of the waiver is resulting in extreme hardship for the family. *Form I-290B, Notice of Appeal or Motion, see also the Applicant's Spouse's Statement*, dated February 6, 2010.

The record of evidence includes, but is not limited to: statements from the applicant's spouse and court records relating to the applicant's conviction. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

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

- (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.

In the present case, the record reflects that the applicant pled guilty to Breaking and Entering under Polish Criminal Code Article 193 on September 6, 2001 and was fined. On June 28, 2002, he was convicted of Burglary, Polish Criminal Code Article 279 § 1 and was sentenced to one year in prison, the implementation of which was stayed, and the applicant was placed on probation for three years. As the applicant has not contested the finding of inadmissibility, and the record does not show it to be in error, we not disturb the finding that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(a)(2)(A)(i)(I) inadmissibility may be waived under section 212(h) of the Act, which provides, in pertinent part:

- (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . 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

A waiver of inadmissibility under section 212(h)(1)(B) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, the U.S. citizen or lawfully resident spouse or parent of the applicant. The qualifying relatives in this proceeding are the applicant's spouse and children. Accordingly, hardship to the applicant will be considered only insofar as it results in hardship to one or more of these qualifying relatives. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

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 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. 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 BIA 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 BIA 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 BIA 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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

We now turn to a consideration of whether the applicant in the present matter has established that a qualifying relative would experience extreme hardship if the waiver application is denied.

In statements, dated January 11, 2009, April 6, 2009, and February 6, 2010, the applicant's spouse asserts that she and the applicant have been married more than 30 years and that she was given assurances at the time of her immigrant visa interview that he would be allowed to follow her to the United States. She states that she has found it extremely difficult to raise and provide for her children in this time of economic hardship. The applicant's spouse reports that she is tired and stressed as a result of having to raise her children while working and taking care of the household, and that she has had to ask her oldest daughter to quit school to help her with the housework and childcare, which has destroyed her oldest daughter's dreams. She states that it hurts her to see the way that her oldest daughter looks at her younger siblings who are attending school. If the applicant is allowed to come to the United States, the applicant's spouse contends, her daughter could resume her education. The applicant's spouse maintains that the applicant's presence is crucial for the support and stability of the family and that she and her children, who now range in age from 13 to 21, have never previously been separated from the applicant.

While the AAO notes the assertions made by the applicant's spouse concerning the hardships she has experienced as a result of her separation from the applicant, we do not find the record to support these claims. The record contains no documentation of the applicant's spouse's income or financial obligations to establish the level of financial hardship she is experiencing. Neither does it offer documentary evidence that demonstrates the applicant is unable to financially assist his spouse and children from Poland. While the AAO acknowledges the emotional hardship created by the separation of families, the record also lacks any supporting evidence to demonstrate the nature or severity of the stress experienced by the applicant's spouse as a result of her separation from the applicant or how it is affecting her ability to meet her responsibilities as a parent and at her place of employment. The record also lacks documentary evidence to establish the impacts of separation on the applicant's children, including those on the applicant's oldest daughter who, her mother states, has been forced to quit school to care for her siblings. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)). Accordingly, the AAO finds that the applicant

has not demonstrated that the hardship being experienced by his spouse and children exceeds that normally created as a result of separation.

We also find the record to lack the evidence necessary to establish that the applicant's spouse and/or children would experience uncommon hardship if they returned to Poland. The applicant has not identified any adversity or difficulty that would face his spouse or children if they reside in Poland and, in the absence of clear assertions from the applicant, the AAO may not speculate as to what hardships his spouse and children would encounter there. Accordingly, the applicant has failed to establish that a qualifying relative would experience extreme hardship upon relocation.

As the applicant has not demonstrated that his inadmissibility would result in extreme hardship for a qualifying relative, he is not eligible for a waiver of inadmissibility under section 212(a)(h) of the Act. Having found the applicant statutorily ineligible for relief, the AAO concludes that no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(h) 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.