

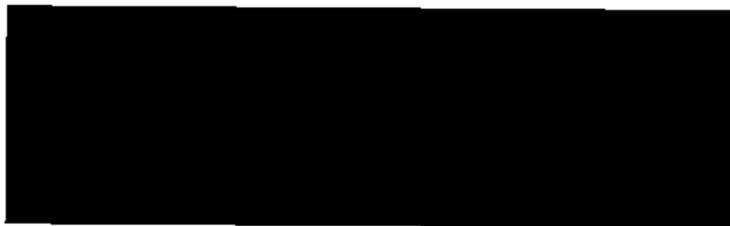
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U.S. Department of Homeland Security  
U.S. Immigration and Citizenship Services  
Office of Administrative Appeals  
20 Massachusetts Avenue, N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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Date: **MAY 02 2012**

Office: CHICAGO, IL

FILE: 

IN RE: Applicant: 

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:



**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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, Illinois, 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 under 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 crimes involving moral turpitude. The director stated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), and concluded that the applicant had failed to establish that her 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.

On appeal, counsel contends that the applicant's husband is a lawful permanent resident and her sons are U.S. citizens and they will experience extreme hardship if the waiver is denied. Counsel states that since filing the waiver application the applicant's husband's anxiety and depression worsened, and his mental condition was a contributing factor to his car accident on July 5, 2008. Counsel conveys that the applicant's husband's job performance is affected by his mental state and that he was diagnosed with elevated blood pressure, asthma, chest pain, severe depression and anxiety, and recurrent cellulitis. Counsel maintains that the applicant's husband came to the United States for medical care for his eyes, and that he will require umbilical hernia surgery in November 2009. Counsel states that stress from the applicant's immigration problems negatively impacts the applicant's husband health. Counsel asserts that the applicant helps her husband by monitoring his medication and that the applicant completed a course in nursing assistance. Counsel declares that the applicant's husband will have to support two households (his in the United States and his wife's in Poland) because it is unlikely the applicant will find work in Poland. Moreover, counsel states that the applicant's children will experience extreme hardship if separated from their mother.

Counsel maintains that returning to Poland will be a hardship to the applicant's husband because it is not likely they will find work, which means they will not be able to buy medication. Counsel states that they will have difficulty finding a job because the applicant has been out of Poland's workforce and because her husband has medical and vision problems and specialized job skills that require a driver's license. Counsel asserts that it is not likely that the applicant's husband will meet driver's license requirements in Poland. Counsel states that the burden of supporting two school age children in Poland establishes extreme hardship and that U.S. Citizenship and Immigration Services (USCIS) failed to consider hardship to the applicant's two sons. Counsel states that *Matter of Kim*, 15 I&N Dec. 88, 89 (BIA 1974) indicates that if children are older and in school, and have assimilated into American culture, as the applicant's children have, they would suffer extreme hardship. Counsel maintains *Matter of L-O-G*, 21 I&N Dec. 413, 418 (BIA 1996) and *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) affirms this. Counsel states that removing the applicant from the United States will effectively force the relocation of the entire family. Counsel contends that the totality of the circumstances establish extreme hardship to the applicant's husband and children in having to separate from the applicant and in having to relocate to Poland.

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.

The record reflects that on January 23, 1998 and August 10, 1998 the applicant was charged with retail theft in Illinois. On January 17, 2001, the applicant pled guilty to and was convicted of the charges. The judge placed the applicant on court supervision.

The director found the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the director.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is under section 212(h) of the Act. That section provides, in pertinent part:

- (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . 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 section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. If extreme hardship to the 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).

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 rendering this decision, the AAO will consider all of the evidence in the record.

The applicant's husband declared in the statement dated November 17, 2009 that he has been a lawful permanent resident since 2008, and has been married to the applicant since 1997. The applicant's husband conveys that his family ties to Poland consist of an estranged relationship with his mother and stepfather. He indicates that he has friends in the United States and established community ties here. The applicant's husband states that his sons, who are 6 and 12 years old, speak

little Polish and that it would be very difficult for them to adjust to life in Poland, struggling with a new culture, lifestyle, standard of living, and language. The applicant's husband discusses his medical problems, depression, anxiety, declining work performance, as well as the discrimination that he will confront in Poland due to his having Amblyopia (known as lazy eye).

The asserted hardship of remaining in the United States without the applicant is emotional in nature, and is consistent with the evidence of psychological evaluations, the letter from the applicant's husband's physician dated November 6, 2009, and the letter from the applicant's husband's employer.

The asserted hardships associated with relocation to Poland are emotional and financial and nature. The applicant's husband indicates that he will not be able to obtain a job in Poland due to his health problems, including Amblyopia. [REDACTED] indicated that the applicant's husband's health problems are elevated blood pressure, depressive disorders, anxiety disorders, asthma, chest pain, and recurrent cellulitis. However, [REDACTED] stated in the letter dated October 9, 2009 that the applicant's husband's current emotional state results from fear of separation from the applicant and his two sons. Presumably, if the applicant's husband joined his wife and sons in Poland he should no longer have these mental health problems. [REDACTED] stated in his undated letters that the applicant's husband has Amblyopia in his right eye, which is a condition where one eye does not develop the quality of vision as compared to the other eye. He states that the applicant's husband needs regular checkups and must wear special glasses at all times or his sight will continue to deteriorate. [REDACTED] indicated that the applicant's husband is capable of passing any state of Illinois vision test with no restrictions other than needing glasses while driving. The applicant's husband was scheduled for umbilical hernia repair in 2009. Presumably, the applicant's husband underwent this surgery. Accordingly, even though the applicant's husband has health problems they do not seem to be so debilitating as to prevent him from full-time work as a CNC machine setup and operator.

The Form G-328 shows that the applicant worked in Poland as a tailor from 1988 to 1993, and her husband has worked in the United States as a CNC machine set-up and operator from 1996 to 2009. Thus, the applicant has not provided evidence showing that they will not be able to obtain a job for which they are qualified in Poland and which will provide health benefits and a wage that will ensure they live decently.

Moreover, the submitted documents about health care do not show that Poland's health care is substandard and that the availability of good health care and treatment for Amblyopia and venous insufficiency are lacking. The document "Welcome to Poland!" conveys that Poland has a both public and private healthcare system and due to increased demand the quality and availability of private healthcare and innovative treatments are expected to increase in Poland from 2010-2011. None of the information about health care discuss ophthalmology and Amblyopia.

In regard to family ties to Poland, [REDACTED] stated in the psychological evaluation dated July 26, 2007, that the applicant's husband conveyed that he and his wife have no family members in Poland as "[e]ither they have died or immigrated to other countries; most of them reside in the U.S." His statement is not in accord with his wife's Form G-325 dated 2007 as it reflects that both her father and mother reside in Poland. Counsel indicated in the letter dated January 28, 2009

that the applicant's children do not speak Polish well. We acknowledge that the applicant's sons, who were born on March 29, 2003 and November 5, 1997, and are now 8 and 14 years old, will have hardship in adjusting to life and school in Poland. Their hardship may be mitigated by the financial means of their parents, as shown in their Citibank statement reflecting savings, which may allow them to obtain additional assistance to ease the difficulty of transition, such as a private tutor or private school education with instruction in English. Moreover, as noted above, there is evidence that the parents of the applicant's wife are in Poland and my assist in the transition. While we acknowledge that the applicant's husband lived in the United States since 1984, the record indicates that he had lived illegally in the United States for most of those years.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed and the waiver application will be denied.

**ORDER:** The appeal is dismissed.