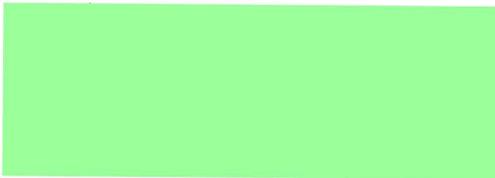




U.S. Citizenship
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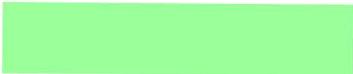
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Date: APR 18 2013

Office: CHICAGO, IL

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:


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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted, the previous decision affirmed and the waiver application denied.

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 applicant is a derivative beneficiary of an approved Immigrant Petition for Alien Worker (Form I-140), and her husband, a lawful permanent resident, is her petitioner. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with her husband and U.S. citizen children.

The Field Office Director concluded that the applicant failed to establish that a bar to her admission to the United States would result in extreme hardship to the qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated September 25, 2009. Thereafter, the applicant appealed the Field Office Director's decision, and the AAO dismissed the appeal on May 2, 2012.

In the motion to reopen and reconsider, counsel asserts that the AAO disregarded supplemental evidence provided in June 2011 regarding the qualifying spouse's health problems and the availability of health care in Poland and failed to properly consider the hardships of the qualifying spouse and applicant's children. The applicant's attorney also states that the length of time since the applicant's criminal offenses occurred was not considered. While it has been over ten years since the applicant committed her offenses, the AAO appropriately did not address the length of time that elapsed, because such a consideration relates to whether the applicant merits a waiver on discretionary grounds. As she was found statutorily ineligible, having failed to show extreme hardship to her qualifying relatives, no purpose would have been served in discussing whether she merits a waiver as a matter of discretion.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601); two Notices of Appeal or Motion (Forms I-290B); briefs and letters from the applicant's attorney; medical documentation regarding the qualifying spouse and their son and articles about the qualifying spouse's conditions; letters from the qualifying spouse, his employer, the applicant, and their children; the applicant's certificate for completion of a basic nursing assistant course; articles regarding health care in Poland; relationship and identification documents for the applicant, qualifying spouse, and their children; a psychological evaluation; photographs; financial documentation; and two Applications to Register Permanent Residence or Adjust Status (Forms I-485) with supporting documentation. The entire record was reviewed and considered in rendering this decision.

A motion to reopen must state the new facts to be provided and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the

evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). Counsel on motion asserts that the AAO erred in failing to properly weigh and consider the medical hardships affecting the qualifying spouse and their son. The evidence submitted on motion includes an additional brief written on behalf of the applicant and an article relating to health care in Poland. The AAO will grant the motion to reopen the proceedings and consider the new documentation submitted in support of the motion to reopen.

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 [REDACTED]. 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 or motion, 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 [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.

The AAO previously found that, when considered in the aggregate, the evidence of record established that the qualifying spouse and their children would suffer extreme hardship in the event that he remained in the United States with their children while the applicant resides in Poland due to her inadmissibility. The AAO affirms its previous finding that the qualifying spouse and children would experience extreme hardship if she were to remain in the United States without the applicant.

The AAO also concluded in our prior decision, however, that the applicant failed to establish that the qualifying spouse, a native of Poland, or their children would suffer extreme hardship if they were to relocate to Poland with her. We affirm our prior determination.

The applicant's attorney asserts that the qualifying spouse and their son will suffer medical hardships if they were to relocate to Poland. The applicant's attorney states that the qualifying spouse has blood circulation issues and has been diagnosed with venous insufficiency. According to an article included with the motion, the condition "can lead to leg problems, varicose veins, ulcers and . . . congenital defects." While the record contains documentation indicating that the applicant's spouse takes medication to improve blood circulation, the handwritten doctor's note stating that he "likely [has] venous insufficiency" does not contain a clear diagnosis or explanation of the exact nature and severity of the qualifying spouse's condition and a description of treatment or family assistance needed. Moreover, the applicant's attorney states that the applicant's spouse had "Strabismus surgery" following the filing of the appeal and that this demonstrates that his health conditions have worsened and are interfering with his work. Evidence in the record corroborates counsel's claim that the applicant's qualifying spouse had surgery. However, insufficient evidence was provided to support the assertions made by counsel regarding the qualifying spouse's medical conditions interfering with his ability to work. The record also lacks a clear explanation from his doctor explaining his ocular condition and the treatment or assistance he needs. As such, the AAO is not in the position to reach conclusions concerning the severity of his medical conditions or the treatment needed. Moreover, the applicant's attorney asserts that the qualifying spouse will not be able to obtain a job in Poland due to his increasing health problems. However, as the record does not establish that the applicant's spouse's health is currently interfering with his ability to work, it is unclear how this will affect his job prospects. Similarly, the applicant's counsel contends that health care in Poland will be difficult to receive without adequate financial resources. However, the record does not establish whether the applicant and his qualifying spouse would be unable to obtain medical care due to a lack of finances. Further, although the applicant's counsel provides documentation regarding health care in Poland, the materials fail to specifically discuss ophthalmological care there.

Additionally, the applicant's attorney states that the applicant's son has vision problems and requires additional screening to determine how to treat his problems, and that the AAO failed to consider this information when it dismissed the applicant's appeal. Counsel submits a letter from the applicant's son's school and a 2009 "vision examination report" referring him to an optometrist based on a screening test. However, the record lacks documentation regarding whether the applicant's son subsequently was diagnosed with vision problems and how his vision problems affect him. Accordingly, even though the record establishes that the applicant's husband and their son have medical conditions, it lacks details about the nature, severity, and effects of such health problems.

Further, the applicant's attorney indicates that, in addition to the qualifying spouse's health issues, the fact that the applicant has been out of the workforce for almost twenty years will make it unlikely that they will be able to find jobs that would allow them to afford private health care for themselves and their children. On appeal, the AAO examined the qualifying spouse's potential economic hardships in Poland and found that the evidence on the record was insufficient to establish that the applicant and his spouse would be unable to obtain employment and support themselves in Poland. However, no additional evidence of financial hardship was provided with the applicant's motion to reopen and reconsider.

The applicant's attorney also indicates that the director incorrectly found that the applicant and qualifying spouse's children will not experience extreme hardship in Poland and states that this finding contradicts established precedent, citing *Matter of Kim*, 15 I & N Dec. 88 (BIA 1974). The applicant's attorney contends that the case supports finding that older children in school who have assimilated into American culture would suffer extreme hardship upon relocation. However, the Board does not specifically make such assertions and stresses the importance of "facts and circumstances peculiar to each case" in determining extreme hardship. The AAO acknowledged in its prior decision that the applicant's children would experience hardship in Poland. However, as in *Matter of Kim*, the record does not demonstrate with sufficient evidence that this hardship would be extreme.

As such, the AAO affirms its prior decision finding that the applicant failed to provide sufficient evidence to demonstrate that her qualifying relatives hardships upon relocation would amount to extreme hardship.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if separated from the applicant, 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. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 relatives in this case.

Furthermore, motions for the reopening of immigration proceedings are disfavored for the same reasons as are petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion, the applicant has not met that burden.

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Page 7

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) 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.

ORDER: The motion will be granted, the previous decision affirmed and the waiver application denied.