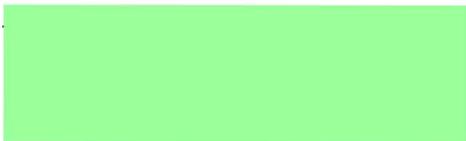


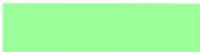
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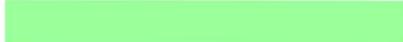
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



DATE: DEC 04 2013

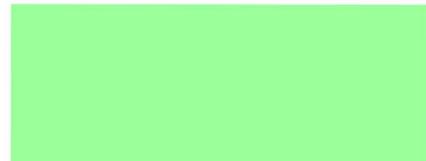
Office: CHICAGO

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you.

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

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 crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. See *Decision of the Field Office Director*, dated September 22, 2012.

A subsequent appeal was dismissed by the AAO based on a finding that extreme hardship to a qualifying relative had not been established. See *Decision of the AAO*, dated August 16, 2013.

In support of the motion, counsel for the applicant submits an affidavit from the applicant's U.S. citizen spouse and financial documentation. The entire record was reviewed and considered in rendering 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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts

that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] 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; or

(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 . . . ; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The record indicates that the applicant was convicted, in 2000 and 2006, of retail theft. Based on the applicant's convictions for retail theft, the field office director determined the applicant to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of crimes

involving moral turpitude. As counsel did not dispute the finding of inadmissibility, and the record did not show the finding to be in error, the AAO did not disturb the determination on appeal.

A waiver of inadmissibility under section 212(h) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse, parent or child of the applicant. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative. Hardship to the applicant or the applicant's spouse's daughter, born in 1991, can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 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 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 v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1998). (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.

On appeal, the AAO found that no supporting documentation has been provided establishing the emotional hardships the applicant's spouse stated she would experience were her husband to relocate abroad. Nor had it been established that the applicant's spouse would be unable to travel to Poland, her native country, on a regular basis to visit the applicant. As for the applicant's spouse's daughter's panic attacks, although a letter had been provided establishing that the applicant has provided her with peace, stability, kindness and caring, the record did not indicate what specific hardships the applicant's spouse's daughter, currently in her early 20s, would experience were the applicant to relocate abroad. Further, with respect to the financial hardship referenced, the AAO determined that no documentation had been provided on appeal establishing the applicant's spouse's current overall financial situation, including income and expenses and assets and liabilities, to establish that without the applicant's physical presence in the United States, the applicant's spouse would experience financial hardship. Nor had it been established that the applicant was unable to obtain gainful employment in Poland and assist his wife financially should the need arise. *Supra* at 5-6.

On motion, counsel maintains that the AAO failed to analyze the emotional hardship the applicant's spouse contends she would experience were her husband to relocate abroad. The AAO noted when it dismissed the appeal that no supporting documentation had been provided on appeal in support of the emotional hardship referenced by the applicant's spouse. 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)). An updated affidavit from the applicant's spouse has been provided on motion. In this affidavit, the applicant's spouse states that if her husband is unable to remain in the United States, her insecurity and anxiety would take a toll

on her emotional and psychological ability. Furthermore, the applicant's spouse contends that her husband has taken care of their financial obligations, and she will not be able to keep up with her financial obligations if he relocates abroad. She maintains that her home will go to foreclosure, her daughter will have to quit her education at [REDACTED] and her daughter will be required to rely on the State of Illinois for her medical insurance. The applicant's spouse asserts that even if she were to obtain employment, she would not make enough money to cover all the expenses. *See Affidavit of Danuta Arsenowicz.*

With respect to the emotional hardship referenced on motion, the AAO acknowledges the applicant's spouse's contention that she and her daughter, currently 22 years old, will experience emotional hardship were they to remain in the United States while the applicant relocates abroad, but the record does not establish the severity of this hardship or the effects on their daily lives. As for the financial hardship referenced, no supporting documentation has been provided establishing that the applicant's spouse would not be able to obtain gainful employment that would allow her meet her current financial responsibilities. As noted in the Affidavit of Support provided by the applicant's spouse, she earned over \$33,000 in 2009. As noted above, assertions without supporting documentation do not suffice to establish extreme hardship. Moreover, with respect to the applicant's spouse's daughter's education and health insurance coverage, it has not been established that the applicant's spouse's daughter is unable to obtain gainful employment, loans or scholarships, thereby ameliorating the hardships referenced by the applicant's spouse with respect to having to assist her daughter while she is pursuing her education. Alternatively, it has not been established that the applicant's ex-husband is unable to assist his daughter, as set out in the Marital Settlement Agreement of [REDACTED]. Finally, no documentation has been provided from counsel on motion establishing that the applicant specifically will be unable to obtain gainful employment in Poland and assist his wife as needed. Articles about the economy in Poland provided by counsel are general in nature and do not suffice to establish that the applicant specifically will be unable to obtain gainful employment abroad. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she 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.

In regard to establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, on appeal the AAO noted that this criterion had not been addressed. *Supra* at 6. On motion, counsel first contends that the original decision to deny the I-601 waiver did not make issue of the applicant's ability or inability to move to Poland. *See Addendum to Form I-290B.* The record establishes that the field office director specifically noted that "regarding the information on the economic conditions in Poland, much of the same may be said for the United States. The economic conditions throughout the world are on difficult times. Both you [the applicant] and your wife have family members in Poland whom you could receive assistance from if needed...." *Supra* at 4. Further, counsel, on motion, states that the AAO's decision improperly assumes that the applicant's daughter-in-law would not suffer hardships if she

relocated abroad.¹ As noted above, the criterion regarding relocation abroad was not addressed on appeal and thus, the AAO did not find extreme hardship. As previously noted, the applicant's spouse's daughter is a college student, in her early twenties. It has not been established that she would have to relocate to Poland with her mother were her mother to decide to reside abroad with the applicant. Finally, on motion the applicant's spouse states that were she to relocate to Poland, she would not be able to receive treatment for her depression. *Supra* at 4. As previously noted by the field office director in September 2012, no documentation has been provided from the applicant's spouse's treatment provider outlining her mental health condition, the short and long-term treatment plan, the severity of the situation, and what hardships she will experience were she to relocate abroad. As such, it has not been established that the applicant's spouse would experience extreme hardship were she to relocate to Poland, her native country, to reside with the applicant as a result of his inadmissibility.

Finally, on motion counsel maintains that a third party asset report was used by the Service to determine that financial hardship was not established. The AAO notes that the evidence establishing numerous assets, as referenced in the field office director's decision, including vehicles and properties owned by the applicant's spouse and approximately \$30,000 in checking and savings accounts, were all provided by counsel, in July 2012 with the Form I-601 and in April 2012, when the Form I-130 was submitted by [REDACTED]. No third party asset report was utilized by the Service. The financial information referenced by the field office director was submitted by the applicant's attorneys on behalf of the applicant.

On motion, the record, reviewed in its entirety, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or is refused admission. There is no documentation establishing that the applicant's spouse's hardships are any different from other families separated as a result of immigration violations. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardships she would face rise to the level of "extreme" as contemplated by statute and case law.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The motion will be granted and the prior decision of the AAO to dismiss the appeal will be affirmed.

¹ The record does not reference a daughter-in-law. It appears to the AAO that counsel is referring to the applicant's spouse's daughter, as mentioned above.