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U.S. Citizenship  
and Immigration  
Services

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[Redacted]

FILE:

[Redacted]

Office: FRANKFURT, GERMANY

Date: DEC 27 2006

IN RE:

[Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

ON BEHALF OF APPLICANT:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Frankfurt, Germany. The matter 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)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant is married to a lawful permanent resident spouse. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and three United States citizen children.

The Officer in Charge found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his qualifying relative. The application was denied accordingly. *Decision of the Officer in Charge, dated January 23, 2006.*

On appeal, counsel asserts that the applicant has demonstrated that his qualifying relative would suffer extreme hardship if the applicant were removed from the United States. *Form I-290B, dated February 23, 2006.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, affidavits and a letter from the applicant's spouse; an affidavit by the applicant; eviction documents; a letter from the Department of Children and Family Services; letters from friends; medical letters and documents; and tax statements for the applicant and his spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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

Attorney General [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present application, the record indicates that the applicant entered the United States on December 22, 1991 at New York, New York and was admitted with a B-2 visa valid until June 21, 1992. *Form I-94*. The applicant married his spouse, a lawful permanent resident, on August 16, 1993. *See marriage certificate*. On May 12, 1993, immigration authorities apprehended the applicant in Colorado. *Form I-213*. The applicant was placed into immigration proceedings, as he was out of status. The applicant's spouse filed a Form I-130 on his behalf which was approved on April 28, 1994. *Form I-130*. On July 29, 1994 the immigration judge granted the applicant voluntary departure on or before October 29, 1994. *Decision of the Immigration Judge, dated July 29, 1994*. The applicant appealed his case to the Board of Immigration Appeals (BIA). In December 1998, the applicant's priority date became current indicating that an immigrant visa was available to him as the spouse of a lawful permanent resident. *Attorney's brief*. No action or motion was filed before the BIA seeking a remand to the immigration judge. *Id.* On November 15, 2000 the BIA dismissed the applicant's appeal. *Decision of the Board of Immigration Appeals, dated November 15, 2000*. The applicant filed a Motion to Reopen, which the BIA dismissed on March 8, 2001. *Decision of the Board of Immigration Appeals, dated March 8, 2001*. The applicant filed a Motion to Reopen or Motion to Reconsider on August 28, 2003 which the BIA rejected on September 16, 2003 for being filed on the wrong form. *Decision of the Board of Immigration Appeals, dated September 16, 2003*. The applicant submitted a Motion to Reopen, which the BIA denied on October 6, 2003, noting that the applicant's Motion to Reopen had already been decided on March 8, 2001. *Decision of the Board of Immigration Appeals, dated October 6, 2003*. On December 15, 2004 the immigration authorities removed the applicant from the United States. *Attorney's brief; See Also boarding pass for the applicant*. The applicant accrued unlawful presence from March 8, 2001, the date of the final ruling on the applicant's appeal, to December 15, 2004, the date he departed the United States. The AAO notes that the Officer in Charge erred in finding that the applicant accrued unlawful presence from December 15, 2000 until June 2003. *Decision of the Officer in Charge, dated January 23, 2006*. In applying to adjust his status to that of Lawful Permanent Resident (LPR), the applicant is seeking admission within 10 years of his December 15, 2004 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from violation of section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant's children or that the applicant himself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(a)(9)(B)(v). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship

pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to a qualifying relative of the applicant must be established in the event that she resides in Poland or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Poland, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in Poland in 1957 and she remained there until coming to the United States in 1993. *Form G-325A for the applicant's spouse*. She continues to have family in Poland. *Id.* The applicant's spouse stated she has not been in the Polish workforce since she left Poland, and while she has a job in the United States, her employment opportunities are limited as she is not fluent in English. *Affidavit from the applicant's spouse, dated February 10, 2006*. The AAO notes there is nothing in the record to preclude the applicant's spouse from obtaining a job in Poland, particularly when Polish is her first language. The applicant and his spouse have three U.S. citizen children, ages 11, 13, and 14. *Form I-485*. The applicant's spouse asserted that her older children are not fluent in Polish and have no connection to Polish society. *Affidavit of the applicant's spouse, dated February 10, 2006*. This statement conflicts with a Department of Children and Family Services report noting that, although sometimes difficult, the applicant's oldest child translates for the family from English to Polish, as the family is Polish speaking. *Letter from [REDACTED] DCFS LAN Liason, dated March 28, 2005*. Counsel clarifies that the applicant's children do not read or write Polish, and that this would cause them to suffer a severe impediment in school. *Attorney's brief*. While the AAO recognizes these issues, it again notes that hardship experienced by the applicant's children is not directly relevant as only the applicant's spouse is a qualifying relative in this case. The record contains numerous documents regarding the applicant's spouse's physical and mental health conditions. The applicant's spouse is scheduled to undergo surgery in December 2006 to repair an injury to her right hand and arm. *Surgery appointment letter, [REDACTED] at Rush, dated November 2, 2006*. The applicant's spouse has struggled with depression as early as 1998. *Medical records, [REDACTED], [REDACTED], dated January 15, 1998; Letter from [REDACTED] [REDACTED] Hospital Center, dated February 10, 2006*. While the AAO acknowledges the applicant's spouse's health conditions, it notes that her physical injury is non-life threatening. Additionally there is nothing in the record to support that the applicant is unable to receive treatment, both physical and mental, in Poland. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to his spouse if she were to reside in Poland.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The removal of the applicant has left his spouse as the sole means of support for their family. *Affidavit of the applicant's spouse, dated February 10, 2006*. The applicant has not been able to secure employment in Poland. *Id.* In October 2005, the applicant's spouse was evicted from her home due to her financial difficulties. *Order for Possession, Circuit Court of Cook County, Illinois, dated September 26,*

2005. She and her children have been staying with a friend who cannot continue to help them indefinitely. Letter from [REDACTED] dated February 13, 2006. The Department of Children and Family Services noted that the applicant's family has experienced some unfortunate financial difficulty which has put the family at risk for homelessness. [REDACTED] DCFS LAN Liason, dated March 28, 2005. Due to the applicant's physical health condition, she has no current use of her right hand or arm. [REDACTED]

[REDACTED] at Rush, dated November 2, 2006. The AAO acknowledges the applicant's physical impediment and how it may temporarily impede her ability to work which thus affects the financial well-being of her family. As previously noted, the applicant's spouse has suffered from depression as early as 1998. Medical records, [REDACTED] dated January 15, 1998; Letter from [REDACTED] dated February 10, 2006. The applicant and his spouse have been married since 1993 and they have three children together. Marriage certificate; Form I-485. The loss of companionship of the applicant directly affects the applicant's spouse. Attorney's brief. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The applicant's spouse's situation is not typical due to her significant financial difficulties, her health conditions, as well as her emotional ties. When viewing these factors cumulatively, the AAO finds that separation will result in extreme hardship to the applicant's spouse.

Although the applicant established extreme hardship to his spouse if she remained in the United States, he failed to establish extreme hardship if she accompanied him to Poland. 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 under section 212(a)(9)(B) of the Act, 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.