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U.S. Citizenship
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Services

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FILE:

Office:

VIENNA, AUSTRIA

Date: **SEP 16 2008**

IN RE: Applicant:

APPLICATION:

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Acting Officer in Charge, Vienna, Austria and appealed to Administrative Appeals Office (AAO). The appeal will be dismissed.

The record reflects that the applicant, a native and citizen of Poland, entered the United States as a visitor in February 1995, presumably with permission to remain for a six month period. The applicant remained in the United States beyond his period of authorized stay. He subsequently departed the United States in October 2003. The applicant accrued unlawful presence from April 1, 1997, the date of the enactment of the unlawful presence provisions, until his departure in October 2003. The applicant 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. The applicant seeks a waiver of inadmissibility in order to return to the United States to reside with his U.S. citizen spouse.

The acting officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated September 8, 2005.

In support of the appeal, the applicant submitted a letter, dated September 20, 2005 with referenced attachments.¹ The entire record was reviewed and considered in rendering this decision.

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

Aliens Unlawfully Present.-

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

¹ In support of the appeal, the applicant, in his letter, makes numerous references to the ineffective assistance of counsel. As he states, "...I contacted my lawyer and asked him the status of my green card. He replied that he has not been taking care of my case since 1995 even though he was taking money from me. I do not know why did he not inform me that I should have left the USA earlier (1998), because meanwhile the immigration law changed and now I face a sentence of prohibition of entrance to the USA for 10 years.... I found out that my lawyer who I hired to take care of my immigration papers was misleading me as well as lying to me about the status of my residence...." *Letter in Support of Appeal*, dated September 20, 2005.

Any appeal or motion based upon a claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved respondent setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the respondent in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him and be given an opportunity to respond, and (3) that the appeal or motion reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any violation of counsel's ethical or legal responsibilities, and if not, why not. *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988), *aff'd*, 857 F.2d 10 (1st Cir. 1988).

....

(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...

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These 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.

To begin, the record contains references to the hardships that the applicant's spouse's children are suffering due to the applicant's inadmissibility. As stated by the applicant's spouse, "...raising and putting two kids through college, by myself, has put a large strain on my life.... I fear that our unfortunate separation will take a toll on our children's education, as I am unable to provide them with full emotional and financial support.... As my kids come closer to adulthood, they need a father to advise them on choices that will affect their careers and personal lives...." *Letter from* [REDACTED] dated March 15, 2005.

Section 212(a)(9)(B)(v) of the Act provides that a waiver under section 212(a)(9)(B)(i)(II) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. Unlike waivers under section 212(h) of the Act, section 212(a)(9)(B)(v) does not mention extreme hardship to a United States citizen or lawful permanent resident child. Nor is extreme hardship to the applicant himself a permissible consideration under the statute. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative, and hardship to the applicant or the applicant's spouse's adult children from her first marriage cannot be considered, except as it may affect the applicant's spouse. It has not been established that hardship to the applicant's spouse's adult children due to the applicant's inadmissibility is causing the applicant's spouse extreme hardship.

The applicant's spouse further states that she is suffering emotional hardship due to the applicant's inadmissibility. As stated by the applicant's spouse, "... We have been together since high school and do not imagine our lives without each other. The thousands of miles that separate us, at the current time, have not undermined our love for each other.... My husband has been my partner, friend and confident through the bad as well as the good times. He is a key component in my families' life and our everyday happiness...." *Id. at 1.*

Although the depth of concern and anxiety over the applicant's inadmissibility is neither doubted or minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

The applicant has not established that his spouse is unable to travel to Poland, her home country, on a regular basis to visit with the applicant. Moreover, no documentation has been provided from a mental health professional that establishes that the applicant's spouse's emotional hardship due to her husband's physical absence from the United States is extreme. Finally, the applicant's spouse's emotional hardship does not appear to be extreme, as she has been able to maintain gainful employment since September 2002. *See Form G-325A, Biographic Information*, dated September 27, 2004.

Counsel further contends that the applicant's spouse is suffering financial hardship due to the applicant's absence. As stated by the applicant's spouse, "... I face... financial struggles everyday...." *Id. at 1.* Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient.").

In this case, no financial documentation has been provided to establish the applicant's and his spouse's current economic situation, including detailed information about their income and expenses, to corroborate that the applicant's spouse is suffering extreme financial hardship due to the applicant's inadmissibility. Nor

has it been established that the applicant is unable to assist with the U.S. household expenses, based on his ownership of a computer business in Poland since December 1989. See *G-325A, Biographic Information*, dated September 27, 2004. While the applicant's spouse may need to make adjustments with respect to the family's financial situation while the applicant resides abroad due to his inadmissibility, it has not been shown that such adjustments would cause the applicant's spouse extreme hardship.

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. The AAO concludes that based on the evidence provided, it has not been established that the applicant's spouse is suffering extreme emotional, psychological and/or financial hardship due to the applicant's absence.

The AAO notes that extreme hardship to a qualifying relative must also be established in the event that he or she relocates abroad based on the denial of the applicant's waiver request. In this case, the applicant has not asserted any reasons why his spouse is unable to relocate to Poland, her birth country, to reside with the applicant.

As such, a review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship if he were not permitted to return to the United States, and moreover, the applicant has failed to show that his U.S. citizen spouse would suffer extreme hardship were she to relocate to Poland to accompany the applicant. The record demonstrates that the applicant's spouse faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States or refused admission. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed. The waiver application is denied.