

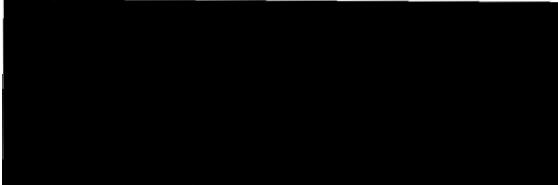
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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. 3000
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U.S. Citizenship
and Immigration
Services

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H4

FILE:



Office: FRANKFURT, GERMANY

Date:

JUN 10

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 Officer-in-Charge, Frankfurt, Germany. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant is a native and citizen of Poland who was found to be inadmissible to the United States under 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 sought a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) the Act, which the Officer-in-Charge denied, finding that the applicant failed to establish hardship to a qualifying relative. *Decision of the Officer-in-Charge, dated March 16, 2006*

The AAO will first address the finding of inadmissibility of unlawful presence.

Section 212(a)(9)(B)(i)(II) of the Act provides that any alien (other than an alien lawfully admitted for permanent residence) who has been unlawfully present in the United States for one year or more, and again seeks admission within 10 years of the date of such alien's departure or removal, is inadmissible.

Unlawful presence accrues when an alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). The periods of unlawful presence under sections 212(a)(9)(B)(i)(I) and (II) are not counted in the aggregate.¹ For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.²

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, then sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* DOS Cable, note 1. *See also Matter of Rodarte*, 23 I&N Dec. 905 (BIA 2006)(departure triggers bar because purpose of bar is to punish recidivists).

The record reflects that the applicant entered the United States on November 15, 1995 and was authorized to remain in the country for six months, that is, until May 15, 1996. On May 22, 1998, the applicant was apprehended while engaging in unauthorized employment. On September 8, 1998, an immigration judge granted the applicant voluntary departure before January 6, 1999; the applicant departed from the United States on December 20, 1998.

For purposes of calculating unlawful presence under section 212(a)(9)(B) of the Act, the applicant began to accrue time in unlawful presence on April 1, 1997. From April 1, 1997 to September 8, 1998, the applicant accrued over one year of unlawful presence, and when she voluntarily departed from the country, she

¹ Memo, Virtue, Acting Assoc. Comm. INS, Grounds of Inadmissibility, Unlawful Presence, June 17, 1997 INS Memo on Grounds of Inadmissibility, Unlawful Presence (96Act.043); and Cable, DOS, No. 98-State-060539 (April 4, 1998).

² *See* DOS Cable, note 1; and IIRIRA Wire #26, HQIRT 50/5.12.

triggered the ten-year-bar, rendering her inadmissible to the United States until December 20, 2008. Consequently, the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1101(a)(9)(B)(i)(II), is correct.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

A waiver under section 212(a)(9)(B) of the Act for unlawful presence provides that:

- (v) Waiver. – The Attorney General [now Secretary, 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant is not a consideration and will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant’s husband. 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).

The record contains letters, medication prescriptions, declarations, a marriage certificate, income tax records, W-2 Forms, photographs, and other documents.

In the letter dated April 2, 2006, the applicant’s husband conveys that separation from his wife has been difficult and that after residing in the United States for 17 years he cannot picture living anywhere else. He indicates that he is 57 years old and takes expensive medication for health problems that is partially paid for by his employer. He states that if he were to return to Poland he would be left without a job to support himself and his family, and would not have health insurance, which he needs to pay for the medication that controls his health problems and allows him to work full-time and lead a normal life. He states that in Poland, his age and health and the high unemployment would make it difficult for him to find employment. He states that separation from his wife has caused financial difficulties of keeping a house in Poland and an apartment in the United States and paying for medication.

The employer of the applicant’s husband is Straval Machine Company, Inc., as shown by the letter dated April 3, 2006 by the president of the company. In the letter, the president states that the applicant’s husband has worked there since November 1994 and is presently a foreman with the company. The president conveys that the frequent requests by the applicant’s husband to travel to Poland has impacted the company’s operations and this extreme hardship to the applicant’s husband and to the company would be removed if the applicant were permitted to move to the United States.

The income tax records for 2002 show the applicant’s husband’s income as \$47,852.

In his declaration dated March 24, 2005, the applicant’s husband states that he has been married to the applicant for nearly 30 years and that their separation has caused emotional trauma to him and his wife for

which they have sought medical treatment for depression, hypertension, and anxiety. He states that they have two children: their daughter is a permanent resident of the United States and their son has a pending immigrant petition. If he returned to Poland, the applicant's husband states that he would be unable to fulfill his obligation as a petitioning sponsor for his son and as a beneficiary-employee of his sponsoring employer. He states that he has been employed for 10 years with Straval Machine Company, Inc., and his frequent trips to Poland have jeopardized his employment. He states that he is the primary provider of his family and they would lose his income if he returned to Poland. He states that he has close ties to his siblings, who are lawful permanent residents in the United States. He states that the emotional stress of not having his wife live with him is unbearable; they have been together for limited, short visits in Poland.

In the statement dated January 5, 2005, the applicant's husband states that he and his wife have cardiologic illnesses, as well as the stress that is associated with their disease. He indicates that they take expensive medicine in order to control their health problems and function. He states that for over 10 years he has been under the care of doctors. The applicant's husband conveys that in returning to Poland he would not be able to support his family for finding employment would be virtually impossible given his age and health and Poland's economy.

In the January 7, 2006 letter, M.D., states that the applicant's husband is being treated for hypertension and anxiety syndrome. He states that the applicant's husband takes lebetaloh HCL, lipitor, diovan, and alprazolam.

In the March 21, 2005 letter, states that the applicant's husband has been under his care since December 1998 and that he is currently being treated for hypertension and anxiety syndrome. He states that the applicant's husband has been referred to a cardiologist for hypertension and hypertension heart disease. He conveys that a reunion of the applicant and her husband would benefit the applicant's husband's medical condition.

The record contains medication prescriptions for the applicant's husband for diovan HCT, zetia, caduet, alprazolam, and labetalol hcl.

The letter by the director of the Regional Office of Employment in Stalowa Wola states that there are 6,552 persons registered and the unemployment rate was 14.3 percent at the end of October 2005. The director states that in 2005 there were 8 offers of employment for turners, of which there were 159 turners registered. The director conveys that employment in the local market is dependent on one's qualifications and search for employment.

The record contains a certificate dated March 15, 2005 by the Regional Specialist Hospital in Stalowa Wola, Poland, describing the medical problems of the applicant, which are arterial hypertension II, chronic coronary insufficiency, arrhythmia, hyperlipaemia mixed. It states that she is receiving treatment due to coronary insufficiency and arterial hypertension.

In rendering this decision, the AAO has carefully considered the documentation in the record.

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists

the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 565-566. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Applying the *Cervantes-Gonzalez* here, extreme hardship to the applicant's husband must be established in the event that he joins the applicant, and in the alternative, that he remains in the United States without the applicant. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record fails to establish that the applicant's husband would endure extreme hardship if he remained in the United States without his wife.

With regard to family separation, courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

The record reflects that the applicant's husband is very concerned about separation from his wife. The letters by Dr. Kawecky convey that the applicant's husband has been under his care since 1998 and is currently receiving treatment for hypertension and anxiety syndrome. Although he indicates that a reunion of the applicant and her husband would be "very beneficial on his medical condition," the statement is vague and doesn't explain how her presence would be beneficial. 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).

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties

does not constitute extreme hardship). In *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shoostary's lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of the applicant's husband, if he 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 as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which will be endured by the applicant's husband, is unusual or beyond that which is normally to be expected upon deportation or exclusion. See *Hassan, Shoostary, Perez, and Sullivan, supra*.

Although the applicant's husband asserts that he has experienced economic hardship as a result of separation from his wife, no documentation has been presented to show that the income of the applicant's husband is insufficient to meet his household expenses and contribute to the financial support of his wife. 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)).

The documentation in the record is insufficient to establish that the applicant's husband would experience extreme hardship if he were to join the applicant in Poland.

The conditions in the country where the applicant's husband would live if he joined his wife are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

The applicant's husband claims that it would be difficult for him to find employment in Poland in his occupation and he submits a letter by the Regional Office of Employment in Stalowa Wola, Poland, to substantiate his claim. Difficulties in obtaining employment in a foreign country are not sufficient to establish extreme hardship. See, e.g., *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (difficulty in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); and *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) ("difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment"). Furthermore, the AAO notes that the letter from the regional office indicates that finding a job depends primarily on one's qualifications and employment search.

The applicant's husband indicates that he will be unable to fulfill his financial responsibilities as a sponsor for his son, who has a pending immigrant petition. Although the applicant's husband indicates that he would not be able to file the affidavit of support on behalf of his son, he has not conveyed how this would result in

hardship to himself. It is noted that the applicant's thirty-year-old daughter who lives in the United States and no documentation has been provided to show that she would be unable to sponsor her brother.

The applicant's husband indicates that he would not have medical care in Poland because he would not have medical insurance; however, the loss of a job along with its employee benefits is not extreme or unique economic hardship, but is a normal occurrence when an alien is deported. *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985). Because health insurance is offered as an employee benefit, the loss of it would not constitute extreme hardship.

Furthermore, because the record conveys that the applicant has similar health problems as her husband, and shows that she is receiving treatment for those conditions in Poland, the AAO finds that the applicant's husband would have access to proper medical care in Poland for his health problems.

The applicant's husband indicates that he has close ties to his siblings who live in the United States. Courts in the United States have held that separation from one's family need not constitute extreme hardship. For instance, in *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt, and that courts have upheld orders of the BIA that resulted in the separation of aliens from members of their families.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.