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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: ROME, ITALY

Date: APR 01 2009

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Rome, Italy and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. Although the record includes a Form G-28, Notice of Entry of Appearance as Attorney or Representative, the AAO notes that the individual listed as the representative is the applicant and the signature is illegible. Accordingly, the AAO will consider the applicant to be self-represented.

The applicant is a native and citizen of Poland who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation and 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 and seeking readmission within ten years of his last departure from the United States. The applicant is married to a naturalized United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his spouse and their United States citizen children.

The Acting District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated June 15, 2005.

On appeal, the applicant contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant failed to establish extreme hardship to his qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B*.

In support of the waiver, the record includes but is not limited to, a statement from the applicant; medical records for the applicant's child; tax statements for the applicant and his spouse; credit card statements and bills; mortgage statements; a medical record for the applicant; an employment letter for the applicant; statements from the applicant's spouse; a statement and psychiatric evaluation for the applicant's spouse; medical records for the applicant's spouse; a statement from the applicant's church; statements from family members and friends; late notice for rent; and Forms W-2 for the applicant. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the

application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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.

The record reflects that, on December 16, 1997, the applicant attempted to gain admission to the United States on a B-2 nonimmigrant visa, but was determined to be returning to his employment in the United States. *Form I-275, Withdrawal of Application for Admission/Consular Notification*. He was expeditiously removed and returned to Poland. *Form I-259, Notice to Detain, Remove, or Present Alien*. He was notified that he was prohibited from entering, attempting to enter, or being in the United States for a period of five years from the date of his departure. *Form I-296, Notice to Alien Ordered Removed/Departure Verification*. In April 1998, the applicant entered the United States without inspection. *Form I-601, Application for Waiver of Ground of Excludability; Form I-871, Notice of Intent/Decision to Reinstate Prior Order*. On March 5, 2001 the applicant filed a *Form I-485, Application to Register Permanent Residence or Adjust Status*. *Form I-485, Application to Register Permanent Resident or Adjust Status*. The applicant marked "no" in answer to the questions on the Form I-485 as to whether he had previously been deported or removed from

the United States and whether he had, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the United States or any immigration benefit. *Id.* On February 18, 2004 the applicant was removed from the United States. *U.S. DHS, BICE, Record of Person and Property Transferred; See Also Form I-213, Record of Deportable/Inadmissible Alien; Form I-871, Notice of Intent/Decision to Reinstate Prior Order.* Based on the foregoing, the AAO finds the applicant to be inadmissible under section 212(a)(6)(C) of the Act. Furthermore, the AAO also finds that the applicant accrued unlawful presence from April 1998 to March 5, 2001, the date of the proper filing of his Form I-485 application. The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [Secretary] as a period of stay for purposes of determining the bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by J. [REDACTED] Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* As the applicant is seeking admission within ten years of his 2004 removal, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act and a section 212(a)(9)(B)(v) waiver of the bar to admission resulting from a violation of section 212(a)(9)(B)(i)(II) of the Act are dependent first upon a showing that the bars impose 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 or his children would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether he is eligible for a waiver under sections 212(i) and 212(a)(9)(B)(v) of the Act. The only relevant hardship in the present case is the 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, 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 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 the applicant's spouse must be established whether 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. *Birth certificate*. Although the record does not document the exact date the applicant was admitted to the United States, the applicant's spouse states that in 1992 she applied for the Diversity Visa Lottery program which she subsequently won. *Statement from the applicant's spouse*, undated. She became a lawful permanent resident of the United States in 1993. *Lawful permanent resident card for the applicant's spouse*. The applicant's spouse speaks Polish. *Statement written in Polish from the applicant's spouse*, undated. According to a psychiatric evaluation, the applicant's spouse cannot live outside of the United States where her family and friends are located. *Statement from [REDACTED]* *Psychiatrist*, dated March 19, 2004. The applicant's spouse left Poland many years ago and lost her relationships with her friends. *Id.* She has nothing in Poland except the applicant. *Id.* While the AAO acknowledges the psychiatrist's statements, it notes that both of applicant's spouse's parents continue to reside in Poland. *Form G-325A, Biographic Information sheet, for the applicant's spouse*, dated April 15, 2004. The applicant states that for himself and his spouse adjusting to living in Poland with an unemployment rate of 20 percent after being absent for many years, would be almost impossible. *Statement from the applicant*, dated October 10, 2006. While the AAO acknowledges the statements of the applicant, it notes that the record fails to document, through published country conditions reports, the employment rate or the economic situation in Poland. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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 AAO notes that one of the applicant's children has been diagnosed with congenital sensomotor polyneuropathy. *Medical records for the applicant's child, No. 6 Independent Public Clinical Hospital, Poland*, dated September 2, 2006. This medical condition affects the child's ability to properly walk. *Id.* The applicant's child was hospitalized from May 9, 2006 to May 25, 2006 and from July 31, 2006 to August 2, 2006. *Id.* The hospital recommended that she receive follow-up care with neurological and orthopaedic clinics. *Id.* While the AAO acknowledges the documented health condition of the applicant's child, it notes that the medical care for the applicant's child documented in the record was provided in Poland. Although the applicant indicates that his daughter would be unable to receive the physical therapy she requires in Poland because of the delays in obtaining treatment appointments, there is no documentation in the record that demonstrates the inadequacy of the healthcare system in Poland with regard to the applicant's daughter. When looking at the aforementioned factors, the AAO does not find that the applicant has 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. According to the applicant, he and his spouse now have three children. *Statement from the applicant*, dated October 10, 2006. The record includes birth certificates for two of the applicant's children. *Birth certificates*. Apart from being self-employed in cleaning services from May 2001 to September 2003, the applicant has been a housewife. *Form G-325A, Biographic Information sheet, for the applicant's spouse*, dated April 15, 2004. After the applicant was removed from the United States, his spouse had to raise their children as well as assist him in running his business. *Statement from the applicant*, dated October 10, 2006. She had never

encountered these types of problems before which caused her to be depressed. *Id.* According to [REDACTED] Psychiatrist, the applicant's spouse meets the criteria for Major Depressive Disorder, Single Episode, Severe consisting of social withdrawal, isolation, lack of motivation, loss of interest and pleasure in nearly all activities which she used to enjoy, tearfulness, poor appetite, poor sleep, feelings of worthlessness, hopelessness, guilt, fatigue, and poor concentration. *Statement from [REDACTED], Psychiatrist, dated March 19, 2004.* In his professional medical opinion, this depression was precipitated by the applicant's current immigration status and deportation to Poland in February 2004. *Id.* He recommends that she be placed on anti-depressant medication and be referred for psychotherapy. *Id.* The applicant's spouse was also admitted and hospitalized from March 28, 2004 until March 30, 2004 with a diagnosis of Major Depressive Disorder. *Statement from [REDACTED], dated April 3, 2004.* As previously noted, one of the applicant's children suffers from congenital sensomotor polyneuropathy which affects her ability to walk. *Medical records for the applicant's child, No. 6 Independent Public Clinical Hospital, Poland, dated September 2, 2006.* According to the applicant, it is too difficult for his spouse to take care of three young children, particularly their daughter who requires intensive physical therapy. *Statement from the applicant, dated October 10, 2006.* Due to his daughter's deteriorating health, gradually more and more time and attention will have to be devoted to her which, with two other small children to take care of, will become incredibly demanding for his spouse. *Id.* The applicant's spouse states that she has no financial means for living and that she is considered unemployable by most of the employers to whom she has applied. *Statement from the applicant's spouse, undated.* She notes that her financial situation is tragic and that she and her family have accumulated many charges on credit cards. *Id.; Credit card overlimit statements and bills.* Additionally, she and her children have had to live with relatives due to their difficult situation. *Statements from [REDACTED] and [REDACTED] undated.* When looking at the aforementioned factors, particularly the mental health condition of the applicant's spouse as documented by a licensed healthcare professional, the physical health condition of the applicant's child as documented by medical records and the affect this has upon the applicant's spouse, and the financial difficulties facing the applicant's spouse as documented in the record, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

However, as the record has failed to also establish the existence of extreme hardship to the applicant's qualifying relative if she relocates to Poland, the applicant is not eligible for a waiver of her inadmissibility under section 212(a)(6)(C) or section 212(a)(9)(B)(i)(II) of the Act. 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. Additionally, as the applicant was removed and then returned to the United States without inspection, the applicant is also inadmissible under section 212(a)(9)(C)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(C)(ii). According to section 212(a)(9)(C)(ii) of the Act, no relief is available unless the applicant has remained outside of the United States for ten years or has been battered or subjected to extreme cruelty. The record does not reflect either of these situations. As such, the applicant is also inadmissible under section 212(a)(9)(C)(i)(I) of the Act

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) and 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.