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



U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: CHICAGO, IL

Date: **MAR 01 2010**

IN RE:

[REDACTED]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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.

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by Field Office Director, Chicago, Illinois and 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 under 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. The applicant is married to a naturalized United States citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The Field Office 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 Field Office Director*, dated August 8, 2007.

On appeal, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) erred in denying the waiver application by not adequately applying the standard set forth in *Matter of Cervantes*, 22 I&N Dec. 560 (BIA 1999). *Form I-290B, Notice of Appeal to the Administrative Appeals Office*.

In support of the waiver, counsel submits a brief and previously submitted a statement. The record also includes, but is not limited to, employment letters for the applicant and her spouse; tax returns for the applicant and her spouse; W-2 forms for the applicant's spouse; a statement from the applicant; statements from the applicant's spouse; medical records for the father of the applicant's spouse; health insurance claims; medical bills; statements from friends; earnings statements for the applicant; an employment letter for the applicant; certificates for the applicant; a social security statement; credit card statements; a license plate renewal bill; a furniture sales receipt; bank statements; telephone bills; a housing lease; and car insurance statements. 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.

The record reflects that on May 3, 2001 the applicant was admitted to the United States on a passport that did not belong to her. *Statement from the applicant*, March 22, 2005; *Form I-485, Application to Register Permanent Residence or Adjust Status*. As such, she is inadmissible under section 212(a)(6)(C)(i) of the Act and must seek a section 212(i) waiver of inadmissibility.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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 would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. Hardship to a non-qualifying relative will be considered only to the extent that it results in hardship to the qualifying relative. 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 he resides in Poland or the United States, as he 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 joins the applicant in Poland, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse is a native of Italy. *Naturalization certificate*. His family, including his parents, brother, aunt, uncles, cousins and grandparents reside near him in the United States. *Statement from the applicant's spouse*, dated April 2006. He has no family in Poland. *Attorney's brief*. He does not speak Polish. *Statement from the applicant's spouse*, undated. Counsel notes that the applicant's spouse's inability to speak Polish would limit his ability to earn a living in Poland. *Attorney's brief*. Counsel further states that the applicant and her spouse are the only guardians for his parents and provide constant care for his elderly father. *Id.* Financially, the applicant's spouse's relocation would decimate his parents who are dependent on

him. *Id.* The applicant's spouse's father has numerous medical issues. *Id.* Medical documentation included in the record shows that the applicant's father has previously been diagnosed with pericarditis, has undergone a radical retropubic prostatectomy, has been diagnosed with Hodgkins disease, and has undergone heart bypass surgery. *Medical records, Elmhurst Memorial Hospital, dated May 14, 1992; Health insurance claim form, dated March 9, 1994; and medical bill, dated May 23, 2000.*

The applicant's spouse asserts that if he relocated to Poland, he would be mentally, culturally and financially paralyzed and that it would be a loss to his parents who are getting frail and need him and the applicant to visit and, frequently, to do things for them. *Statements from the applicant's spouse, dated April 2006 and undated.* When looking at the aforementioned factors, including the applicant's spouse's lack of familial and cultural ties to Poland and his inability to speak Polish, which would affect his ability to earn a living and adjust to life in Poland, the AAO finds that the applicant has demonstrated that relocation to Poland would result in extreme hardship for her spouse.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant's spouse is a native of Italy. *Naturalization certificate.* His family, including his parents, brother, aunt, uncles, cousins and grandparents reside near him in the United States. *Statement from the applicant's spouse, dated April 2006.* The record includes documentation regarding the expenses of the applicant's spouse. *See credit card bills; medical bills; car insurance bills; a license plate renewal bill; an invoice for furniture; telephone bills; and a housing lease.* While the AAO acknowledges the various documented expenses for the applicant's spouse, it notes that tax statements and W-2 Forms included in the record show his earnings to have steadily increased, and that he earned \$86,724.00 in 2005. *Tax statements; W-2 forms.* As such, the AAO does not find the record to establish that the applicant's spouse would suffer financial hardship as a result of being separated from his spouse.

The applicant's spouse states that he will not be able to live without the applicant. *Statement from the applicant's spouse, undated.* He asserts that prior to meeting the applicant he had a gambling habit that placed him in heavy debt and that, in the applicant's absence, he fears that he will fall into his former habit. *Id.* Letters from the applicant's spouse's friends attest to the positive effect that the applicant has had on her spouse's life and character. *Letters from friends, dated April 8, April 11 and April 25, 2006.* While the AAO acknowledges these statements, it does not find the record to demonstrate through documentary evidence the emotional/mental impact of separation on the applicant's spouse. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in 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 acknowledges the difficulties faced by the applicant's spouse. However, 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).* For example, *Matter of Pilch, 21 I&N Dec. 627 (BIA 1996),* held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In

addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

As the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States if he remains in the United States, the applicant is not eligible for a waiver of her inadmissibility under 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 she merits a waiver as a matter of discretion.

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