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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services



415

Date: **AUG 02 2011** Office: CHICAGO

FILE:

IN RE: Applicant:

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the 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 pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission into the United States by willful misrepresentation. She seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband and daughter.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director*, dated March 24, 2009.

On appeal, counsel for the applicant asserts that the field office director abused his discretion by not properly considering the provided evidence in assessing the hardship to the applicant's husband. *Statement from Counsel on Form I-290B*, dated April 22, 2009.

The record contains, but is not limited to: statements from counsel; statements from the applicant and her husband; correspondence from the applicant's mother; and tax, financial, and business records for the applicant and her husband. The entire record was reviewed and considered in rendering this decision.

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

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.

The record shows that on or about January 17, 2002 the applicant entered the United States using the passport and visa of another individual which she purchased for \$5000. The field office director determined that the applicant entered the United States by making material misrepresentations (her true identity and lack of proper entry documents), and thus she is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest her inadmissibility on appeal, and she requires a waiver under section 212(i) of the Act.

Section 212(i) of the Act provides, in pertinent part:

- (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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her daughter can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

The applicant submitted a psychological evaluation, dated January 27, 2009, conducted by [REDACTED] a licensed clinical psychologist. [REDACTED] recounted the history of the applicant's and her husband's relationship, including that they were married in 2003. [REDACTED] noted that the applicant's husband's parents immigrated to the United States from Poland when he was 16 years old, and that he faced emotional difficulty due to being separated from them for four years. [REDACTED] provided that the applicant's husband joined his parents in the United States, and the applicant followed. [REDACTED] described the applicant's psychological difficulty regarding the impact her immigration difficulty is having on her and her husband. [REDACTED] presented the results of various tests administered to the applicant's husband that included an indication that he has "Mild symptomatology of Major Depressive Disorder" and that he is prone to react with fear when faced with stressful situations. [REDACTED] commented that the applicant's husband spoke Polish throughout his evaluation. [REDACTED] posited that "if [the applicant's husband] is separated from [the applicant] his mental health will decay significantly and he will not be able to provide for his wife and daughter."

The applicant provided a letter from her mother describing the conditions in which her family members live in Poland. The applicant's mother indicated that her family faces economic difficulty in Poland, and that they do not have space to house the applicant should she return.

In a brief submitted on May 18, 2009, counsel asserts that the applicant's husband will endure extreme hardship should the present waiver application be denied. Counsel contends that the applicant's husband would face emotional difficulty should he become separated from his mother and siblings in the United States, in part due to the prior "abandonment" he experienced. Counsel asserts that the applicant's husband supports his mother, and that he would be unable to continue in Poland. Counsel states that the applicant's husband no longer has family in Poland. Counsel contends that the applicant's husband and brother-in-law operate a business together, and that they would suffer financial hardship if the applicant's husband departs the United States.

Counsel states that weight must be given to the longevity of the applicant's and her husband's relationship. Counsel contends that the positive factors in this case must be weighed against the negative factors. Counsel cites an unpublished decision from the AAO, and asserts that it shows that the emotional difficulty of family separation can support a finding of extreme hardship.

In correspondence dated February 5, 2009, counsel asserted that the applicant and her husband are emotionally and financially dependent on one another. Counsel noted that the applicant's husband's

father passed away, and that his mother speaks no English and is retired. Counsel stated that the applicant's mother-in-law is dependent on the applicant's husband. Counsel provided that the applicant's husband has friends in the United States who provide emotional support for him. Counsel indicated that the applicant's husband wishes for his daughter to be educated in the United States. Counsel asserted that the applicant's husband has invested considerable effort in his business with his brother, and that they will most likely lose the business should the applicant's husband return to Poland. Counsel provided that the applicant's husband would face economic difficulty should he reside in the United States with his daughter without the applicant's assistance due to the cost of childcare, and due to his likely need to support the applicant abroad.

Upon review, it is first noted that the applicant and her husband have not submitted statements regarding hardship her husband would face should the present waiver application be denied. Thus, the AAO must assess hardship to the applicant's husband based on other evidence in the record. Counsel makes factual assertions on behalf of the applicant, yet without documentary evidence to support a given claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant has not shown that her husband will suffer extreme hardship should the present waiver application be denied. The AAO has carefully examined the report from [REDACTED]. The information presented is helpful in understanding the applicant's husband's family history and emotional challenges, and the AAO values the opinion of a mental health professional. However, the conclusions drawn do not sufficiently distinguish the applicant's husband's psychological challenges from those commonly faced by individuals who become separated from a spouse or relocate abroad due to inadmissibility. It is noted that [REDACTED] report was generated after a single meeting with the applicant and her husband, for the purpose of this proceeding, and it does not represent treatment for a mental health disorder. The applicant has not asserted or shown that her husband required or received counseling or mental health services. The AAO appreciates that the applicant's husband has faced family separation in the past when his parents immigrated to the United States without him. Yet, [REDACTED] commented that the applicant's husband will suffer emotional difficulty if he is separated from the applicant, without reference to his mother or other family members. The applicant has not shown that her husband is unable to relocate to Poland to maintain unity with her and their daughter. Nor has the applicant established that her mother-in-law is unable to join them in Poland if desired. Thus, [REDACTED] report is not sufficient to show that the applicant's husband will endure emotional challenges that will rise to an extreme level.

Counsel asserts that the applicant's husband will experience economic difficulty in Poland. Yet, the applicant has not provided any reports on the state of the Polish economy, or information about her husband's employable skills. Her husband operates a business in the United States, ostensibly as a building contractor, and the applicant has not shown that he would be unable to practice his trade in Poland. The AAO has examined the letter from the applicant's mother and acknowledges that it describes economic hardships her family is facing. Yet, the letter does not, by itself, show that the applicant and her husband would be compelled to reside in her mother's location, or that she and her

husband would be subjected to the same conditions. The letter is informative, yet it is not, by itself, adequate evidence of conditions in Poland.

The applicant's husband is a native of Poland and he speaks Polish, as noted by [REDACTED]. While they may not be positioned to provide material support, the applicant has family in Poland who may provide emotional support, as evidenced by the submitted letter from the applicant's mother. The record does not show that the applicant's husband would be without community or family in Poland.

Counsel asserts that the applicant's mother-in-law relies on the applicant's husband for financial and emotional support. However, the applicant has not provided any documentation to show that her husband supports his mother economically. Counsel claims that the applicant's husband has siblings in the United States, yet the applicant has not asserted that they would be unable to assist their mother in her husband's absence. Further, the facts that the applicant's mother-in-law is retired, allegedly dependent on the applicant's husband, a non-English speaker, and a native of Poland suggest that she can return there without many of the common challenges caused by relocation such as loss of employment, adjustment to an unfamiliar language and culture, and lack of family support. The applicant has not shown that her husband would be compelled to reside apart from his mother should he return to Poland.

Counsel asserts that the applicant's husband and brother-in-law may lose their business should her husband return to Poland. Yet, the applicant has not provided sufficient explanation or documentation of the business in order for the AAO to assess the impact her husband's departure would have. For example, the records lack an indication of whether the business has other employees, whether the company has assets, and whether it generates sufficient income to hire other individuals to perform the tasks that the applicant's husband presently satisfies.

Counsel cites an unpublished AAO decision to stand for the proposition that family separation may support a finding of extreme hardship. The AAO does place considerable weight on the emotional impact of family separation, yet each waiver application must be evaluated on its own merits to determine the particular circumstances a qualifying relative will face. It is noted that unpublished decisions of the AAO are not binding on the present proceeding.

Counsel asserts that the field office director failed to balance positive and negative factors in the present matter. Yet, unless the applicant shows that a qualifying relative will suffer extreme hardship, U.S. Citizenship and Immigration Services (USCIS) lacks discretion to approve the waiver application, and a balancing of factors serves no purpose.

Based on the foregoing, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to her husband, as required for a waiver under section 212(i) of the Act. Having found the applicant statutorily ineligible for a waiver, no purpose would be served in discussing whether she warrants a favorable exercise of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant also bears the burden of showing that she warrants a favorable exercise of discretion. *Matter of Mendez-Morales, supra*. In this case, the applicant has not met her burden to show that she merits approval of her application, and the appeal will be dismissed.

ORDER: The appeal is dismissed.