identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

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

#5

[redacted]

Date: DEC 14 2011 Office: MOUNT LAUREL, NJ FILE: [redacted]

IN RE: Applicant [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:

SELF-REPRESENTED

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,

for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Mount Laurel, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a lawful permanent resident of the United States and is the father of two United States citizen children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 his spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated July 27, 2009.

On appeal, the applicant states that he "could not bare [sic] taking [his] family out of the US and having them suffer in poverty in Poland." *Form I-290B*, filed August 31, 2009.

The record includes, but is not limited to, statements from the applicant and his wife, letters of support for the applicant and his wife, medical documents for the applicant's children, a banking document, tax documents, medical bills, household and utility bills, insurance documents, and articles on the economy in Poland. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

> (i) In general.-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.
>
> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

> (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 [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...

In the present case, the record indicates that in November 1999, the applicant entered the United States by presenting a Polish passport in someone else's name. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that the applicant does not dispute this finding.

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 his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 United States Citizenship and Immigration Service (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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 of Immigration Appeals (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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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.*, *Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In a statement dated May 26, 2009, the applicant states that since birth, his son "has been plagued by illnesses, infections, and allergic rashes." In a statement dated August 24, 2009, the applicant's wife states her son's immune system is weak and he requires frequent doctor's visits. In a note dated August 17, 2009, [redacted] states the applicant's son "has frequent health problems requiring multiple visits to [the] office and parents attention." The AAO notes that the record establishes that the applicant's son has visited the pediatrician and been treated for illnesses; however, the submitted documentation does not establish that the applicant's son has a weak immune system or other significant medical condition. Additionally, the AAO notes that there is no documentation in the record establishing that the applicant's son cannot receive treatment in Poland or that he has to remain in the United States to continue receiving any necessary treatment. Further, the AAO acknowledges that the applicant's son may suffer some hardship in Poland; however, the AAO notes that the applicant's son is not a qualifying relative, and the applicant has not shown that hardship to his son will elevate his wife's challenges to an extreme level. In a statement dated May 21, 2009, the applicant's wife states her son needs the "excellent medical care" in the United States. The applicant's wife states she and the applicant can cover their son's medical care with the money they make in the United States. She claims that they "would never be able to" cover their son's medical care in Poland. The applicant's wife states she and the applicant "come from small villages in Poland, where the average family income is $150 a month," and if they join the applicant in Poland, they would live in poverty. The AAO notes the

applicant's wife's concerns regarding the difficulties she and her children would face in relocating to Poland.

The AAO acknowledges that the applicant's wife is a lawful permanent resident of the United States and that she has resided in the United States for many years. However, the AAO observes that the applicant's wife is a native and citizen of Poland and the record does not establish that she does not speak useful languages or that she has no family ties to Poland. Additionally, other than the articles on the economy in Poland, the AAO notes that the record does not contain documentary evidence, e.g., country conditions reports on Poland, that demonstrate that the applicant's wife would be unable to obtain employment upon relocation that would allow her to use the skills she has acquired in the United States. Therefore, based on the record before it, the AAO finds that, even considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she returned to Poland.

In addition, the record also fails to establish extreme hardship to the applicant's wife if she remains in the United States. The applicant states that without him in the United States, his wife would suffer emotionally and financially. The applicant's wife states her life "here, without [the applicant], would be unbearable." She claims that the applicant is "a wonderful provider." The applicant states that even though his wife "works hard at cleaning homes," she "does not earn enough to be able to support herself and [their] two children, to pay for rent, utilities, clothes, and other daily necessities, not to mention the medical expenses [they] are incurring from [their] younger one's frequent medical visits." As noted above, [redacted] states the applicant's son "has frequent health problems requiring multiple visits to [the] office and parents attention." However, as noted above, no medical documentation has been submitted establishing the severity of the applicant's son's medical issues or how often he receives treatment and/or monitoring for his medical conditions. The AAO notes the emotional and financial concerns of the applicant's wife.

The AAO acknowledges that the applicant's wife may suffer some emotional problems in being separated from the applicant. However, the AAO notes that while it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished his wife's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. The AAO finds the record to include some documentation of the applicant and his wife's income and expenses; however, this material offers insufficient proof that the applicant's wife will be unable to support herself in the applicant's absence. Additionally, the applicant has not distinguished his wife's financial challenges from those commonly experienced when a family member remains in the United States alone. Further, the AAO notes that the applicant has submitted no evidence to establish that he would be unable to obtain employment in Poland and, thereby, financially assist his wife from outside the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. 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.

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