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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**

H5

FEB 18 2011

[Redacted]

FILE: [Redacted]

Office: VIENNA, AUSTRIA

Date:

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:

[Redacted]

**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,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge (OIC), Vienna, Austria, 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 attempting to seek admission into the United States through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a United States citizen and 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 wife.

The OIC 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 Officer in Charge*, dated June 11, 2008.

On appeal, the applicant, through counsel, asserts that the United States Citizenship and Immigration Services (USCIS) "erred in denying the applicant's...waiver of inadmissibility based on a finding that he failed to demonstrate that the refusal of his admission would constitute an 'extreme hardship' to his United States citizen spouse." *Form I-290B*, dated July 9, 2008.

The record includes, but is not limited to, counsel's appeal brief; statements and affidavits from the applicant, his wife, and his mother-in-law; letters of support; a psychological evaluation on the applicant's wife; a letter from [REDACTED] regarding the applicant's wife's orthodontic treatments; medical documents for the applicant's mother-in-law; dental bills, lease documents, vehicle maintenance bills, utility bills, insurance documents, a bank statement, and tax documents; and articles on the applicant's mother-in-law's medications. 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 on or about September 13, 2002, the applicant presented a visa referral which was obtained by fraud.

In counsel's undated appeal brief, counsel claims that "the applicant neither paid anyone to obtain a visa nor admitted to doing so. In fact, until the receipt of the denial of the waiver application, the applicant had no knowledge that he has been accused of paying money in order to obtain a tourist visa. His understanding after the conversation with the consul who denied his immigrant visa, was that his violation was for failing to disclose that he had an additional reason for coming to the United States, i.e., to visit his fiancée." In an undated affidavit, the applicant states that after applying for the visa, "[a]t no time did the consul ask [him] about paying anyone for any documents. The truth was that [he] never paid anything to anyone.... [He] did not admit to paying anyone at the time of the interview." He claims that "[t]he first time [he] was ever asked if [he] paid anyone any money was at the time of [his] immigrant visa interview in November 2007. [He] answered that [he] did not pay anyone any money and that the Priest simply wanted to help [him]." Counsel states that "[h]ad applicant known of the accusation of fraud at any time he would have denied the accusation and sought to clear his record." The AAO notes that the record indicates that on November 15, 2007, during the applicant's waiver interview at the U.S. Embassy in Warsaw, Poland, he "admitted paying money to obtain the referral," when he "came to the Embassy with a group of people with a B referral" on September 13, 2002. *See Memorandum Reports of Interviews with Applications Filing I-601 Applications for Immigrant Waivers*, dated November 15, 2007. The consular officer states the applicant "attempted to use the Embassy referral procedures to obscure the fact that he would otherwise have been ineligible for a visa based on his circumstances in Poland." *Id.*

The AAO finds counsel's contention that the applicant is not inadmissible to the United States through the misrepresentation of a material fact to be unpersuasive. The AAO observes that in waiver proceedings the burden of proof is on the applicant to establish admissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant's statements on appeal are not consistent with his statements during his November 15, 2007 waiver interview, and he not provided any explanation to clarify this inconsistency. In that the applicant's statements are inconsistent and he has submitted no documentary evidence to support that he did not pay money for a visa referral, the AAO find the record to support a determination that the applicant attempted to obtain a visa through misrepresentation. 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)). Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals (Board) stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United

States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The AAO notes that counsel claims that “[t]he adjudicating officer erred in finding that the applicant...did not merit a favorable exercise of discretion. This determination is based on an allegation that the applicant committed a serious immigration violation, that is that he paid money ‘in order to obtain a visa referral.’” Counsel states that “the Officer’s decision was heavily influenced by the severity of the incorrect accusation of fraud is clear. He begins his denial by reciting that false accusation as the basis for applicant’s inadmissibility and ends with a statement that the ‘applicant does not merit a favorable exercise of discretion due to his prior experiences in the U.S.’” Counsel claims that “[h]ere, again, the officer errs, as the applicant has never been in the U.S. and so cannot have had ‘prior experiences’ here. It is unclear why such statements and allegations appear in the record, leading to a question of whether the Officer was reviewing the correct consular record.” The AAO acknowledges that the OIC’s decision may contain inaccurate factual information; however, the AAO will review the applicant’s case de novo based on the above-discussed legal standard.<sup>1</sup>

The first prong of the analysis addresses hardship to the applicant’s spouse if she relocates to Poland. In an affidavit dated March 20, 2008, the applicant’s wife claims she “could not reasonably relocate to Poland to join [the applicant].” The applicant’s wife states she has “built a life for [herself] in the U.S. and it has become [her] only home.” She states she has a job, “a home to live in, and the support of [her] entire family here. In Poland, [she] [has] nothing.” In a psychological evaluation dated February 19, 2008, [REDACTED] reports that it will be difficult for the applicant’s wife to find a job

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<sup>1</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

in Poland. In an undated appeal brief, counsel states the applicant's wife is an only child, her "entire family resides legally in the U.S., including her parents," and she "has no other ties to Poland." [REDACTED] reports that the applicant's wife "has had braces for the last year and will continue this treatment" for "possibly a year." The AAO notes that the record establishes that in February 2008, the applicant's wife was seeking orthodontic treatment. The AAO notes the applicant's wife's concerns regarding relocating to Poland.

Counsel states the applicant's wife "shares an exceptionally close bond with her parents." In an affidavit dated March 20, 2008, the applicant's mother-in-law states she "cannot imagine having to be separated from [the applicant's wife]." The applicant's wife states "[i]t would be a great emotional and psychological hardship on [her] and [her] parents if [she] were separated from them." Counsel claims that the applicant's parents-in-law suffer from various medical conditions and they "rely on [the applicant's wife] tremendously." Counsel states the applicant's mother-in-law suffers from hypertension and cholesterolemia, and his father-in-law "is also in poor health...which prevents him from working." The applicant's wife states her mother "takes numerous prescription medications daily to treat her high blood pressure, high cholesterol, and arthritis." The AAO notes that the record establishes that the applicant's mother-in-law is being treated for hypertension and cholesterolemia, and she has been prescribed three different medications. However, the AAO notes that no medical documentation was submitted establishing that the applicant's father-in-law is suffering from any medical conditions or that his claimed medical conditions prevent him from working. Counsel states the applicant's wife "resides with her parents and takes care of them, both financially and emotionally." Counsel claims that the applicant's wife's parents do not drive, so she drives them to their doctor's appointments and to the store, and she helps with household tasks. Counsel claims that the applicant's wife's parents "rely on her for financial support and...she earns just enough money to cover their expenses each month." The AAO notes the concerns of the applicant's wife's parents.

The AAO acknowledges the claims made regarding the difficulties the applicant's wife would face in relocating to Poland. The AAO notes that the applicant's wife has been residing in the United States for many years. However, the AAO observes that the applicant's wife is a native of Poland and the record does not establish that she does not speak Polish. Additionally, other than [REDACTED] statement regarding the difficulty in finding a job in Poland, no country conditions materials or documentation has been submitted to establish that the applicant's wife would be unable to obtain employment in Poland. Further, the AAO notes that the applicant has not shown that his wife's parents require his wife's economic or other support, such that his wife would endure significant emotional difficulty should she reside apart from them and lack the ability to assist them. Therefore, based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if she relocated 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's wife states she suffers "from some medical conditions." The applicant's mother-in-law states the applicant's wife "desperately misses [the applicant] and cannot bear to be separated from him much longer." Counsel states the applicant's "wife has been distraught [and] has suffered from deteriorating mental health." The applicant's mother-in-law states she is

“worried about [the applicant’s wife’s] health.” The applicant’s wife states she has “been suffering from crying spells, high anxiety, panic attacks, insomnia, lack of appetite, and depression.” [REDACTED] diagnosed the applicant’s wife with major depressive disorder. Counsel claims that [REDACTED] “warned [the applicant’s wife] that her conditions will likely worsen if she continues to be separated from [the applicant].” The AAO notes that the statements and report from [REDACTED] do not sufficiently distinguish the applicant’s wife’s emotional hardship from that which is typically faced by the spouses of those deemed inadmissible.

The applicant’s wife states she would like to go to school to be a teacher but she cannot afford it right now. She states she travels “to Poland to visit [the applicant] whenever [she] can” but “[t]his creates quite a financial burden for [her] and causes [her] and [her] entire family great distress.” The applicant’s mother-in-law states the applicant and his wife “cannot afford to support two households, one in Poland and one here.”

The AAO finds the record to include some documentation of the applicant’s wife’s expenses; however, this material offers insufficient evidence that she is unable to support herself in the applicant’s absence. Additionally, the record does not contain documentary evidence that demonstrates the applicant is 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 will 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(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.