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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 Immigrationn Services

PUBLIC COPY

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FILE: [redacted] Office: FRANKFURT, GERMANY
[redacted] (RELATES)

Date: JAN 31 2011

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) and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer in Charge, Frankfurt, Germany. The decision 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 procure entry into the United States by fraud or the willful misrepresentation of a material fact and section 212(a)(9)(B)(i)(II) of 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 her last departure from the United States. The record indicates that the applicant is married to a United States citizen (USC) and 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) and section 212(a)(9)(B)(v) of the Act, in order to reside in the United States with her United States citizen spouse and children.

The Acting Officer in Charge found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting Officer in Charge,* dated April 24, 2008.

On appeal, counsel asserts that the applicant's husband and her children would suffer extreme emotional and financial hardship if the applicant's waiver application is denied. *See Form I-290B,* filed on May 13, 2008, and the accompanying brief in support of the appeal.

The record includes, but is not limited to, counsel's brief in support of the appeal, several statements and an affidavit from the applicant spouse, supportive letters and statements from family and friends, copies of U.S. individual Income Tax Returns, bank and other financial documents, copies of some bills addressed to the applicant's spouse, a copy of a Psychological Evaluation of the applicant's spouse and her children, and copies of medical documents relating to the applicant's spouse. The entire record was reviewed and considered in rendering this decision on the appeal.

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 [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....

Section 212(a)(9) 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 [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.

In the present case, the record reflects that on May 6, 2002, the applicant attempted to procure entry into the United States through San Ysidro, California, by presenting an I-551, Permanent Resident Card, belonging to another person. The applicant was placed in removal proceedings before an Immigration Judge and released from custody. The applicant subsequently filed an Application for Asylum and Withholding of Removal (Form I-589) before the Immigration Judge. On May 19, 2003, the Immigration Judge denied the applicant's request for asylum and ordered her removed from the United States to Poland. The applicant appealed the decision and on May 26, 2004, the Board of Immigration Appeals dismissed the appeal and affirmed the Immigration Judge's decision. The applicant subsequently departed the United States sometime in 2005. The record reflects that on July 10, 2002, the applicant's United States citizen husband filed a Form I-130 on the applicant's behalf. On October 1, 2004, the Form I-130 was approved. The Consular Officer in Warsaw, Poland, found the applicant inadmissible to the United States pursuant to section 212(a)(6)(C)(i) and section 212(a)(9)(B)(i)(II) of the Act, and refused to grant her an immigrant visa. The applicant filed

a Form I-601 waiver application. On April 24, 2008, the Acting Officer in Charge denied the Form I-601, finding that the applicant failed to demonstrate extreme hardship to a qualifying relative.

The AAO notes that the applicant does not dispute the grounds for her inadmissibility; thus, the AAO affirms the Acting Officer in Charge's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) and section 212(a)(9)(B)(i)(II) of the Act. Since the criteria for a waiver of both section 212(i) and section 212(a)(9)(B)(v) are the same, only one hardship analysis is necessary.

A waiver of inadmissibility under section (212)(i) or 212(a)(9)(B)(v) 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 children 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-Moralez,* 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 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) (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.

In this case, the record reflects that the applicant's husband, is a 33-year-old native of Poland and citizen of the United States. The applicant and her husband were married in Poland on June 28, 1997 and they have two children. It appears from the record that the applicant and their two children are currently residing in Poland. The applicant's husband asserts that he is suffering extreme emotional and financial hardship as a result of family separation and the denial of the applicant's waiver request.

Regarding the emotional and financial hardship of separation, the applicant's husband submitted several statements and an affidavit stating that separation from the applicant has caused him and his children extreme emotional and financial hardship. The AAO notes that the statements submitted by the applicant's husband regarding hardships he and his children were undergoing due to the applicant's absence and how it has impacted them, were prepared prior to the children moving to Poland to live with the applicant. The applicant's husband states that because he could not take care of the children without the applicant's help and could not afford to hire a childcare provider for them, he had to send them to Poland to live with the applicant. The applicant's husband states that he has been under stress because he misses the applicant and his children, that the separation has

negatively affected his work performance and that he is on the verge of being fired by his employer. The applicant's husband states that he is experiencing financial hardship because he has had to take care of two households, one in the United States and one in Poland. *See Statement from* dated April 29, 2006. The applicant's husband states that the cumulative effect of the stress from family separation and financial stress, has caused him sleepless nights, that he has developed medical problems and that he has had to seek medical care and psychological help to deal with the problems.

In support of his assertions, the applicant's husband submitted several statements, supportive statements from family and friends, and letters from dated in 2006, regarding his two children, two letters from his employer, Inc, dated in 2006 and 2008, a letter from , dated December 6, 2006, signed by LCSW, stating that the applicant's husband was first seen at their clinic on November 16, 2006, that his physician, recommended that he take Lexapro, 10 mg and that he see a psychotherapist. states that the applicant's husband suffers from severe insomnia and diagnoses him with depression and general anxiety. The record also contains a letter from , dated May 6, 2008, signed by , stating that the applicant's husband has been a patient of the medical group since August 8, 2006, and that he has hypertension, dislipidemia and gout. There is no indication medication was prescribed and there is not a diagnosis for insomnia stated. The record also contains a Psychological Hardship Evaluation by of New Jersey, L.L.C., , dated May 1, 2008, financial and tax documents, and some bills, addressed to the applicant's husband.

The AAO acknowledges that separation from the applicant has caused various hardships to the applicant's husband; however, the evidence in the record is not sufficient to demonstrate that the difficulties he faces meet the extreme hardship standard. In a psychological evaluation of the applicant's husband, diagnosed him with generalized anxiety disorder and major depressive disorder. states that the protracted separation from his wife has resulted in severe consequences for the applicant's husband and their two children, causing extreme hardship in multiple areas of functioning, to include familial, medical, educational, developmental, interpersonal, professional, and financial problems, and that these factors appear to cumulatively meet the clinical criteria for extreme hardship. also states that the emotional preoccupation and burdens weigh heavily on the applicant's husband and he is at his "emotional breaking point."

Regarding the emotional hardship of separation, states that the trauma of separation has resulted in severe psychological distress for the applicant's husband. states that the impact of separation on the applicant's two children has been profound because the applicant's husband works long hours and is not able to spend quality time with the children, so he was forced to send them to Poland to live with the applicant, and that while in Poland, the children have encountered academic hardship due to a significant change in educational systems and issues relating to their accents and that has also suffered from chronic medical and nutritional problems, which seem to have worsened since his departure from the United States. Regarding

financial and vocational hardships, states that the applicant's husband has spent a significant amount of money on lawyer's fees, expenses calling the applicant in Poland, providing for his family abroad and visiting Poland frequently. further states that the applicant's husband has been neglecting himself, and due to lack of sleep, his decision-making capacity has been reduced and he is at risk for accidents and injuries because of impaired reaction and psychomotor slowing and that he is at risk of losing his job. *See Psychological Hardship Evaluation by* dated May 1, 2008.

The AAO notes that the record does not contain any documentation that would support findings of the kind of hardship the applicant's husband is undergoing, his children's health conditions, or any education and behavioral problems they are undergoing in Poland. 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)). Additionally, although the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment by is based on one interview with the applicant's husband. In that the conclusions reached in the submitted assessment are based solely on this single interview of the applicant's husband, the AAO does not find the report to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering the report speculative and diminishing its value to a determination of extreme hardship. Furthermore, while the applicant and claim extreme financial hardship to the applicant's husband, the record does not contain detailed information on the family's expenses, including the additional cost of traveling back and forth to Poland. Accordingly, the AAO finds that the applicant has failed to demonstrate that the challenges her husband faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship.

Regarding relocation, the applicant's husband states that he is concerned about his children's education, and his family's health and overall well-being in Poland. *See Statement from* dated April 29, 2006. The applicant's husband asserts that he has significant ties here in the United States because his entire family lives in the United States, that they are a close family that they see each other regularly, and that it will be a hardship for him to move back to Poland. *Id.* states that the applicant's husband receives a full benefit package plan from his employer in the United States, that he will suffer financial hardship if he returns to Poland because "there is no way that he would be able to come close to duplicating his salary and benefits in Poland." *See Psychological Hardship Evaluation by* , dated May 1, 2008.

The AAO acknowledges that the applicant's husband has family ties in the United States, has had a long-term employment in the United States and has been residing in the United States for more than fourteen years, however, it does not find the evidence in the record sufficient to demonstrate that the applicant's husband would suffer extreme hardship if he relocates to Poland to live with the applicant. As previously indicated, the record does not contain any documentation that would support findings that the applicant's husband would suffer hardship in Poland, or that his children have experienced or would continue to experience health, education or behavioral problems in Poland, which would result in extreme hardship to the applicant's husband. The record

contains a copy of a U.S. Department of State Country Report on Human Rights Practices in Poland for 2006. The AAO notes that the country condition report in the record provides a general overview of human rights conditions in Poland, but does not demonstrate that the applicant or her husband would be targeted for discrimination, violence or abuse. The report does not demonstrate that relocation to Poland would result in severe developmental problems for the applicant's children or that her spouse would experience extreme emotional hardship because of their children's struggle to adapt to the conditions in Poland. Additionally, the applicant's husband was born in Poland and spent his formative years there. He and the applicant were married in Poland and had two children there. Based on the record before it, the AAO finds that the applicant has failed to establish that relocation to Poland would result in extreme hardship to her spouse.

In sum, although the applicant's husband claims hardships based on family separation, the record does not support a finding that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez,* 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under section 212(i) and section 212(a)(9)(B)(v) of the Act.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.