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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**

H6



FILE:



Office: VIENNA, AUSTRIA

Date:

MAR 11 2011

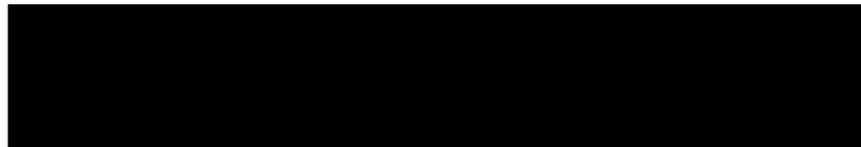
IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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:



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)(9)(B)(i)(II) of the Immigration and Nationality Act (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 and the mother of a United States citizen. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her United States citizen spouse and child.

The OIC found that the applicant had 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 Officer in Charge*, dated November 28, 2008.

On appeal, the applicant, through counsel, claims that the appeal “is based on mistake of review made concerning the adjudicator’s application of the extreme hardship standard.” *Appeal brief*, filed January 29, 2009.

The record includes, but is not limited to, counsel’s appeal brief; a statement from the applicant’s husband; letters of support for the applicant and her husband; a letter from Ms. [REDACTED] regarding the applicant’s husband’s mental health; medical documents for the applicant’s daughter; letters from the applicant’s employer; documents regarding the applicant’s husband’s electrician license; articles on telecommunication workers in Poland, healthcare in Poland, asthma in Poland, and asthma in children; and country specific information on Poland. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) 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 application, the record indicates that on January 15, 2000, the applicant entered the United States without inspection. In May 2008, the applicant departed the United States.

The applicant accrued unlawful presence from January 15, 2000, the date she entered the United States without inspection, until May 2008, when she departed the United States. The applicant is attempting to seek admission into the United States within ten years of her May 2008 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

A waiver of inadmissibility under section 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 child 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 United States Citizenship and Immigration Service (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. ██████████ 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 first prong of the analysis addresses hardship to the applicant’s husband if he relocates to Poland. In a statement dated May 16, 2008, the applicant’s husband states “[r]elocation to Poland would cause [him] and [their] daughter...extreme and severe hardships.” Counsel claims that if the applicant’s husband “were forced to move to Poland[,] he and his family would all suffer financial and emotional hardship. He would lose his job in the US and find none in Poland.” Counsel states the applicant’s husband does not have any professional contacts in Poland. In a brief in support of the I-601, counsel states the applicant’s husband “would be unable to afford any medical care” in Poland. The applicant’s husband states he wants the best health care for his daughter and that is in United States. He also states that he has “medical, dental and vision coverage for [his] family,” and in Poland, he would have “to

pay for private insurance.” Counsel states the applicant’s husband is close to his sister who lives in the area, it would be a hardship to be separated from her, and he has no family in Poland. Counsel claims that the applicant’s husband’s sister has been “his emotional support through many tumultuous years.” In a letter dated December 11, 2010, Ms. [REDACTED] diagnosed the applicant’s husband with depressive disorder. Ms. [REDACTED] indicates that the applicant’s husband has “responded to Cognitive Behavioral Therapy, which has helped him.” The AAO notes the applicant’s husband’s concerns regarding the difficulties he would face in relocating to Poland.

Counsel states that the applicant’s daughter “cannot live safely in Poland” because of Poland’s “substandard healthcare system and an environment that exacerbates conditions such as [the applicant’s daughter’s].” The AAO notes that the record establishes that the applicant’s daughter suffers from asthma, seasonal allergic rhinitis, and restricted airways disease. Counsel claims that “[w]hile it may be true that there are high levels of asthma in the US as well as Poland the fact remains that [the applicant’s daughter’s] condition has worsened in her time in Poland and that she is suffering and will continue to suffer more emotional stress if she remains in Poland or moves to the US to be with her father, as she will then be separated from [the applicant].” Counsel states the applicant’s daughter has had to visit the doctor in Poland numerous times and she has developed “an anxiety disorder.” In a medical certificate dated December 22, 2008, Dr. [REDACTED], a doctor in Poland, recommends that psychological care be provided for the applicant’s daughter. Counsel claims that the applicant’s daughter would continue to have anxiety if she stays in Poland. The AAO notes that medical documentation in the record establishes that the applicant’s daughter was seen on at least two separate occasions for her medical conditions in Poland. Additionally, the AAO notes the record does not establish that the applicant’s daughter cannot be treated for her medical conditions in Poland or that she has to return to the United States to receive treatment. In fact, the AAO notes that medical documentation in the record establishes that the applicant’s daughter is being treated for her medical conditions in Poland. The AAO notes the concerns for the applicant’s daughter.

The AAO acknowledges that the applicant’s husband is a citizen of the United States and that he may experience some hardship in returning to Poland. However, the AAO notes that the applicant’s husband is a native of Poland, and it has not been established that he does not speak Polish. Additionally, the AAO notes that the applicant’s husband may be suffering from some mental health issues; however, there is no documentation in the record establishing that he cannot continue his therapy in Poland or that he has to remain in the United States to receive therapy. The AAO acknowledges that the applicant’s daughter may be suffering some hardship in residing in Poland. However, the AAO notes that the applicant’s daughter is not a qualifying relative, and her hardship is only considered to the extent that it has an impact on the applicant’s husband. The AAO notes that other than the submitted article on telecommunication workers in Poland and the country specific information on Poland, there is no other documentary evidence in the record establishing that the applicant’s husband would be unable to obtain employment upon relocation that would allow him to use the skills he has acquired in the United States. 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, the record fails to demonstrate that the applicant’s husband has any

medical condition that would affect his ability to relocate. Therefore, based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if he relocated to Poland.

The second prong addresses hardship to the applicant's husband upon remaining in the United States. In a letter dated January 31, 2011, counsel states a close friend of the applicant's husband's "believes that [the applicant's husband] has 'greatly changed.'" As noted above, Ms. [REDACTED] diagnosed the applicant's husband with depressive disorder. She claims that the applicant's husband "has also experienced physical symptoms such as gastrointestinal distress." Ms. [REDACTED] states the applicant's husband's symptoms include difficulty sleeping and concentrating, sadness, depression, anger, ruminative thoughts, and feelings of hopelessness. Ms. [REDACTED] reports that the applicant's husband's symptoms "began after he became separated from [the applicant] and young daughter." The AAO acknowledges that the applicant's husband is experiencing emotional issues because of the separation from the applicant.

Counsel states that the applicant's husband's "mental and physical states [have] deteriorated steadily since [the applicant] left for Poland," and "if this continues it could so affect his job performance he will lose his position and then will suffer financial hardship due to the separation as well." Counsel also states the applicant's husband's employer "believes that [the applicant's husband's] mental state is impacting his job performance." In a letter dated December 31, 2010, Mr. [REDACTED] the applicant's husband's employer, states the applicant's husband has changed, his "attention to detail has waned," he "is often preoccupied," he "is markedly somewhere else in his mind," and "he no longer goes the extra mile." Mr. [REDACTED] states the applicant's husband "still does his job adequately, but he no longer displays the hunger or the tenacity that separates him from the rest of [his] employees." Mr. [REDACTED] indicates that in his opinion, "this adverse transformation in [the applicant's husband's] persona is directly associated to the absence of his family." The AAO notes the applicant's husband's employment issues.

The applicant's husband states he is the "sole provider for [their] family" and travel to Poland is expensive. Counsel states that the applicant is her "daughter's primary care giver." She claims that the applicant's husband "is unable to pay for the extensive care his daughter requires due to his odd and long hours." While the AAO notes the applicant's husband's claims of financial hardship, it does not find the record to support them. The AAO notes that the record contains no documentation that establishes the applicant's husband's income or expenses in the applicant's absence. Additionally, the AAO notes that the applicant has submitted no evidence to establish that she is unable to obtain employment in Poland and, thereby, reduce the financial burden on her husband.

However, the AAO finds that when the applicant's husband's emotional and employment issues are considered in combination with the normal hardships that result from the exclusion of a loved one, the applicant has established that her husband would experience extreme hardship if he remained in the United States.

However, in that the record does not also establish that the applicant's husband would suffer extreme hardship if he relocated to Poland, the applicant has failed to establish extreme hardship to her husband under section 212(a)(9)(B)(v) 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)(9)(B)(v) 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.