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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals*  
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Washington, DC 20529-2090



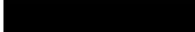
U.S. Citizenship  
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DATE: MAR 29 2012

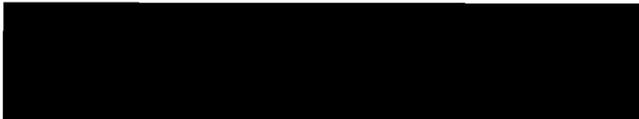
OFFICE: CHICAGO

FILE: 

IN RE: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
for

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Chicago, 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 entered the United States with a fraudulent passport in November 1995. The Field Office Director found the applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured entry to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his lawful permanent resident spouse and U.S. citizen child<sup>1</sup>.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and the applicant did not merit a waiver grant based upon discretion, and denied the application accordingly. *See Decision of the Field Office Director*, dated September 25, 2009.

On appeal, counsel for the applicant asserts that the applicant's spouse would experience extreme hardship if she relocated to Poland because of her health conditions and ties to the United States. Counsel further asserts that the applicant's spouse would experience extreme hardship if she were separated from her spouse because she could not financially support her family.

In support of the waiver application and appeal, the applicant submitted identity documents, medical documentation concerning the applicant and his spouse, a letter from the applicant's church, family photographs, and financial documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(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:

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

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<sup>1</sup> It is noted that counsel's brief accompanying the applicant's Form I290B, received on November 23, 2009, states that the applicant's spouse was pregnant. As there is no further information concerning this pregnancy in the record, the applicant and his spouse will be referred to as the parents of one child rather than two.

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...

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 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.

The applicant's qualifying relative in this case is her lawful permanent resident spouse. The record contains references to hardship the applicant would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant will not be separately considered, except as it may affect the applicant's spouse.

In the present case, the record reflects that the applicant is a thirty-four year-old native and citizen of Poland. The applicant's spouse is a thirty-three year-old native of Poland and lawful permanent resident of the United States. The applicant and his spouse are currently residing with their child in Chicago, Illinois.

Counsel for the applicant asserts that it could be devastating for the applicant's spouse to have to choose to live without her husband and child. It is noted that the record does not contain an affidavit from the applicant's spouse concerning the emotional hardship she would face if separated from her husband. The record also does not contain any medical documentation concerning the applicant's spouse's psychological state. It is acknowledged that separation from a spouse nearly always creates a level of hardship for both parties, but there is no indication that the emotional hardship suffered by the applicant's spouse would be so serious that she would be unable to carry out her daily activities. There is insufficient evidence in the record to find that the applicant's spouse would suffer a level of emotional hardship beyond the common results of inadmissibility or removal if separated from the applicant.

Counsel for the applicant also asserts that the applicant's spouse makes substantially less income than the applicant and would suffer financially without her husband. Counsel further contends that the applicant's spouse relies upon her husband's health insurance to cover her medical condition, polycythemia vera, a condition that leads to increased red blood cell production. It is noted that the applicant's spouse currently works as a massage therapist on a part-time basis. Counsel for the applicant states that the applicant's spouse would be unable to work on a full-time basis and simultaneously manage her pregnancy and medical condition. The applicant's spouse was pregnant at the time of the applicant's Form I-290B filing, on November 21, 2009, but there is no indication that the applicant's spouse is currently pregnant. In addition, the medical documentation submitted by the applicant's spouse's physician does not indicate that she is unable

to work on a full-time basis due to her condition. In fact, the applicant's spouse's physician states only that the applicant's spouse is under his treatment and requires intermittent phlebotomies. Further, according to applicant's counsel, the applicant's spouse previously received free medical care, but did not receive appropriate treatment. There is no supporting medical evidence indicating that the applicant's spouse previously received inappropriate treatment or that she would be unable to obtain treatment for her condition upon separation from her husband. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. 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)). In addition, courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, it is not enough by itself to justify an extreme hardship determination. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

Counsel for the applicant asserts that the applicant and his spouse would suffer extreme hardship upon relocation to Poland because they would leave behind their ties in the United States, he would lose employment in the United States, and his spouse would not be able to treat her medical condition. Initially, it is noted that the applicant is not a qualifying relative in the context of this application and any hardship he would suffer will only be considered insofar as it affects his spouse. It is also noted that the applicant's spouse is a native of Poland and there is no information concerning the ties she has in Poland. Counsel for the applicant submitted background information concerning Poland, which indicates an unemployment rate of 9.8% in 2008. Counsel for the applicant also indicates that the applicant has years of experience and is highly regarded in his field of auto repair. Based upon these factors, it is not reasonable to assume that the applicant would be unsuccessful in locating employment in Poland. Further, the applicant's Form G-325A indicates that his parents currently reside in Poland. There is no information concerning the extent to which the applicant's relatives in Poland would be able to assist in his family's relocation.

Counsel for the applicant asserts that the applicant's spouse has extensive and close-knit family ties in the United States. The applicant submitted copies of identity documents for some of the applicant's spouse's family members to evidence their presence in the United States. However, there is no supporting information concerning the nature and extent of the relationships between the applicant's spouse and her family members in the United States. Specifically, the applicant's spouse has not submitted an affidavit and there are no letters of support submitted by any of her family members. In fact, the only letter of support in the record is submitted by their parish priest and written as a character reference for the applicant.

Counsel for the applicant contends that the applicant's spouse would be unable to receive appropriate medical care for her polycythemia vera if she relocated to Poland. Counsel asserts that much of the applicant's spouse's treatment is completely unavailable in Poland due to the cost, especially without private medical insurance. In support of this assertion, counsel submitted evidence that Poland was the third lowest OECD member country in health spending as a share of

GDP in 2007. These facts do not address the availability of necessary medical treatment for the applicant's spouse in Poland. As such, the record does not contain any information indicating that the applicant's spouse would be unable to receive treatment for her medical condition in Poland. The record contains insufficient evidence to find that the applicant's spouse would suffer hardship beyond the common consequences of inadmissibility or removal if she relocated to Poland.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. While the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) and of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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. 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.