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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave. NW MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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DATE: **MAY 17 2012** OFFICE: PHILADELPHIA FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Immigration and Nationality Act section 212(i); 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 Field Office Director, Philadelphia, Pennsylvania and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] is a native and citizen of Poland. He was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA or the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having willfully misrepresented a material fact in order to gain admission to the United States. 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 U.S. citizen spouse.

On February 24, 2010, Field Office Director concluded that the applicant failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, in this case his U.S. citizen spouse, and denied the application accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility but states that the applicant's U.S. citizen spouse will suffer extreme hardship.

In support of the application, the record contains, but is not limited to, a brief from counsel for the applicant, a psychological evaluation of the applicant's spouse and children, medical records for the applicant's son, a declaration from the applicant's spouse, declarations from the applicant, biographical information for the applicant, his spouse, and their children, financial information for the applicant's business, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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, 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.

The applicant states that he obtained admission to the United States on June 20, 1994 using the Polish passport and U.S. visa of another individual. The applicant also states that he applied for immigration benefits in the United States previously and did not disclose his admission to the United States using fraudulent documentation. As such, the applicant is inadmissible under INA § 212(a)(6)(C) for having used fraud or misrepresentation to procure admission and other immigration benefits under the Act. The applicant does not contest his inadmissibility on appeal.

*Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

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.

Counsel for the applicant states that the applicant’s spouse will suffer extreme hardship if the applicant is not permitted to remain in the United States, citing the applicant’s spouse’s family ties in the United States, her two young children, and her emotional and financial dependence on the applicant. In regards to financial hardship, the applicant’s spouse states that the applicant is the primary breadwinner for the household. The record indicates that the applicant has worked in the transportation business and, as of August 6, 2009, ran his own business. The applicant states that his gross pay varied from week to week, averaging \_\_\_\_\_ month. The applicant’s spouse states that she has assisted the applicant with his business, but otherwise has not worked outside the home. The applicant’s spouse, however, has not stated why she is unable to work outside the home. Although the applicant’s spouse states that her husband drives a truck and she would be unable to perform that work in his absence, she has not stated why she is unable to obtain other work. She also states that her entire nuclear family including her parents and three siblings are U.S. citizens and reside in the United States, but she has not stated what assistance, if any, she is able to obtain from her family. Although the record establishes that the applicant’s spouse presently relies on the applicant’s income, the record does not establish that she would be unable to support herself if she were to remain in the United States without the

applicant. Additionally, the record does not contain any evidence of the applicant's spouse's expenses or her stated debt.

Counsel for the applicant also states that the applicant's spouse would suffer from emotional hardship if she is separated from her spouse. The record indicates that [REDACTED] conducted a forensic evaluation of the applicant's spouse and her children and determined that the applicant's spouse is suffering from Major Depressive Disorder and that the applicant's 10 year-old-son is suffering from Separation Anxiety Disorder. The applicant's spouse reported to [REDACTED] that she "is very concerned about the children's well-being in the absence of their father." Although the AAO respects the opinion of [REDACTED] and takes note of her conclusion that the applicant's spouse is very dependent on the presence of her husband, the evidence, when considered in the aggregate, does not suggest that the applicant's spouse would suffer from hardship that rises to the level of extreme. The applicant's spouse's financial and emotional concerns about surviving as a single parent appear to be the type of concerns typically experienced by families separated due to immigration violations.

Counsel for the applicant also states that the applicant's spouse would be unable to relocate to Poland. The record establishes that the applicant's spouse is a native of Poland, but became a U.S. citizen on October 18, 2002. The applicant's spouse states that she has resided in the United States since she was 12 years old and that her entire nuclear family resides in the United States. The applicant's spouse states that her children do not read or write Polish and that "[m]oving them to Poland would cause a huge setback in their educational development." The applicant has also submitted evidence that one of his children has undergone surgery – "bilateral myringotomy with insertion of tubes and adenoidectomy." The AAO notes that hardship to the applicant's children is not relevant under the statute unless it is established to cause hardship to the qualifying relative – the applicant's spouse. Moreover, the letter from the applicant's child's physician does not mention the need for any ongoing care as a result of the applicant's child's surgery. Although the need for ongoing care is mentioned in the report by [REDACTED], the record does not indicate that [REDACTED] is a medical doctor or that she has examined or treated the applicant's son for his medical conditions. The AAO also notes that there is no indication in the record that the applicant's child would be unable to obtain medical care in Poland. The applicant's spouse indicates that wishes to remain in the United States in order to provide her children with a good education, however, the inability to pursue certain educational goals for your children is not the type of hardship that can be distinguished from the ordinary hardship suffered by individuals as a result of a family member's inadmissibility. Although the AAO notes the applicant's spouse's difficult situation, the record does not establish that the hardships she would face upon relocation to Poland rise to the level of "extreme" as contemplated by statute and case law.

Although the applicant's spouse's concern 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. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, 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, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i), of the Act, be above and beyond the normal, expected hardship involved in such cases. In this case, when the evidence is considered in the aggregate, the AAO is unable to conclude that the applicant’s spouse would suffer extreme hardship.

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 her qualifying relative as required under INA § 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining 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. 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.