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

(b)(6)

Date: JAN 04 2013 Office: CHICAGO FILE:

IN RE: Applicant:

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.

Thank you,

for

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native of Poland who was found 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 seeking to procure admission to the United States through fraud or misrepresentation. The applicant attempted to enter the United States on December 23, 1995, using a passport and a visa belonging to another person, and was subsequently removed from the United States. The applicant does not contest this finding, but rather seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States with her U.S. citizen husband.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *See Decision of the Field Office Director,* March 7, 2011.

The record contains the following documentation: brief filed by the applicant's attorney in support of Form I-290B, Notice of Appeal or Motion; statements from the applicant and the applicant's spouse; financial documentation; a psychological evaluation of the applicant's spouse; medical documentation for the applicant's son; and a copy of the birth certificate of the applicant's daughter, born March 7, 2012. 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 that:

> 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 alien 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 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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 U.S. citizen spouse is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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).

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 v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1993), (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 contends that the applicant's spouse will suffer economic hardship if the applicant's waiver is not approved. Counsel notes that the income of the applicant's spouse has recently diminished. The record includes copies of federal income tax returns for the applicant and her spouse for the years 2001 to 2009. The income tax returns indicate a steady increase in the adjusted gross income from $63,685 in 2001 to a peak of $101,328 in 2006; since 2006, the adjusted gross income decreased to $100,222 in 2007, to $94,258 in 2008, to a low of $47, 959 in the most recent year on record. This confirms counsel contention applicant's spouse's income has diminished. The record indicates that in 2009, the applicant's salary comprised $36,929 of the couple's income, while the applicant's spouse earned only $6,713.50. The record indicates that the monthly mortgage payment for the home of the applicant and her spouse is $2,245.50. The evidence on the record indicates that the applicant's spouse will suffer financial hardship if he were to be separated from the applicant.

Counsel also contends that the applicant's spouse will suffer emotional hardship if the applicant's waiver is not approved. The record includes a psychological evaluation of the applicant's spouse, which states that the mental state of the applicant's spouse is unstable, and that he shows highly neurotic symptoms, with low self-esteem and difficulty when trying to think rationally under stress. The evaluation indicates that the psychological state of the applicant's spouse indicates Major Depressive Disorder, single episode, mild, with a recommendation for individual counseling. The evaluation concludes that the applicant's spouse's emotional well-being depends on the stability of his family, and that he may require psychiatric care in the future without the support of his wife, indicating hardship if he were to be separated from the applicant.

The record includes medical documentation of the applicant's son, indicating that the applicant's son suffers from ear problems and speech delays. As noted above, under section 212(i) of the Act, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. Counsel notes that the applicant's spouse would suffer additional harm if he were to be separated from the applicant due to

the effect on his son, as his son would be either forced to leave the country, or would face difficulty in continuing to obtain the treatment he has been receiving for his speech development problems and ear infection.

The record establishes that if the waiver application were denied, the applicant's spouse would experience financial and emotional hardship as a result of the applicant's separation, as well as the additional hardship the applicant's spouse would encounter due to the medical conditions of the applicant's son, and the effects of the situation on the applicant's spouse if separated from the applicant. These hardships, when considered in the aggregate, are beyond the common results of removal and would rise to the level of extreme hardship if he remained in the United States without the applicant.

The record further indicates that the applicant's spouse would experience hardship were he to relocate to Poland to be with the applicant. The record indicates that the applicant's spouse has resided in the United States since 1991, a period of more than 20 years, and has developed strong community ties to the United States. Counsel states that relocating would be detrimental to the applicant's spouse, and would result in the emotionally and economically painful loss of the family's home in the United States. Counsel also states that relocation would deprive the applicant's son of his life in the United States, and the current treatment that he has been receiving for his speech development problems and ear problems. Thus, the applicant has established that her spouse would suffer hardship beyond the common results of removal if he were to relocate to Poland to reside with the applicant.

The AAO thus finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-,* 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the U.S. citizen spouse and two U.S. citizen children would face if the applicant were to reside in Poland, regardless of whether they accompanied the applicant or remained in the United States; the applicant's apparent lack of a criminal record; and the passage of more than 15 years since the applicant's misrepresentation in attempting to enter the United States. The unfavorable factor in this matter is the applicant's attempt to unlawfully enter into the United States.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.