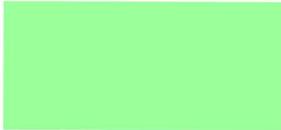




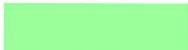
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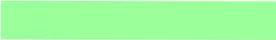
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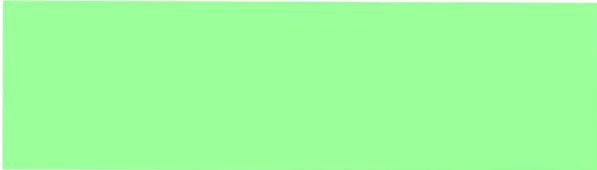
Office: DETROIT FIELD OFFICE

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Detroit, Michigan, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen 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 procuring admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with her U.S. citizen spouse.

The field office director found that the applicant failed to establish that her qualifying relative would experience extreme hardship as a consequence of her inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated January 24, 2014.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that USCIS erred by not finding the applicant's spouse would suffer extreme hardship as a consequence of the applicant's inadmissibility. Counsel states the spouse has spent his entire life in the United States, where his immediately family lives, and he has a small business that he would have to give up to relocate to Poland, and he would suffer emotionally and financially supporting two households if he stayed in the United States without the applicant. With the appeal counsel submits a brief, statements from the applicant and her spouse, financial documentation, employment information for the applicant's spouse, country information for Poland, medical information concerning the applicant, and a psychological evaluation for the applicant's spouse. The record contains previous statements from the applicant and her spouse, letters of support for the applicant from family and friends, a letter from the spouse's mother, and other evidence submitted with the Application to Adjust Status (Form I-485). 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.

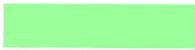
The record reflects that the applicant entered the United States on August 24, 2004, using a Polish passport and U.S. visitor visa issued in the name of another person. Neither counsel nor the applicant has contested the inadmissibility finding of the field office director.

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. The applicant's spouse 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).

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. *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 asserts that the spouse helps his mother financially and pays child support to his two daughters from a prior marriage, which ended in divorce at a time when he was drinking. Counsel asserts that the applicant’s spouse hopes to continue repairing the relationship with his daughters, who are now teenagers. Counsel states that although the applicant’s spouse had turned to alcohol when experiencing problems, he has promised to never drink again since meeting the applicant, but he is now having difficulty coping with the prospect of losing the applicant, who has supported him and helped him rebuild his life. Counsel asserts that the spouse had lost a previous welding company due to the economic downturn, but is now growing a business through hard work and dedication, and the applicant’s support has been a big part of the success. Counsel further asserts that if the applicant were in Poland her spouse would have the added financial obligation of supporting a second household, as the applicant is unable to perform manual labor due to back problems and there is high unemployment in Poland, particularly for women.

The applicant’s spouse states that losing the applicant would be devastating since they plan to spend rest of lives together. He states that he needs the applicant for support as he continues to build his business and his relationship with daughters. He states that he had been drinking heavily to cope with his father’s death and the loss of his daughters and business, but that the applicant motivated him to try harder and be better. A letter from a licensed counselor states that the applicant’s spouse is being treated for severe anxiety with fatigue, nervousness, irritability, and problems with concentration that were triggered by the fact that his wife may have to leave the United States. It states that prolonged conditions may negatively affect his ability to perform his job, which requires constant attention.

The applicant states that separation will cause extreme mental, emotional, and economic hardship to her spouse. The applicant states that she has nothing to go back to in Poland, as she has no house

and her children are unable to provide accommodation or financial help. She states that she has no chance to get a job there and would be unable to return to the meat packing plant where she once worked since she has extreme back pain caused by injury to lumbar discs. Country information for Poland submitted to the record indicates that discrimination against women in the labor market is a serious problem.

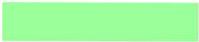
We find that the record fails to establish that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant. The evidence submitted does not provide sufficient detail to show the severity of any emotional hardship or the effects on his daily life to establish that such emotional hardship is outside the ordinary consequences of removal. The letter from a counselor does not establish that the hardships the applicant's spouse would experience are beyond those normally associated when a spouse is found to be inadmissible.

Counsel asserts that if the applicant were in Poland her spouse would have the additional obligation of supporting two households. Documents submitted to the record show the spouse's income and child support payments, but not his assets, liabilities or overall financial situation to establish that without the applicant's physical presence in the United States the spouse will experience financial hardship. We recognize that the applicant's spouse will endure some hardship as a result of long-term separation from the applicant. However, his situation if he remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

Counsel asserts that if the applicant's spouse were to relocate to Poland he would lose his business and an opportunity to work in a specialty area at the center of the auto industry. Counsel asserts that the spouse is meeting his financial obligations, including child support and the applicant's medical care, but that given his age; that he does not read, write, or speak Polish; and that he has only a high school education, the high unemployment rate in Poland would prevent him from finding a job there.

The applicant's spouse states that all his family and support are in the United States, and that he cannot leave his mother and family behind with financial and emotional burdens if he goes to Poland. He states that he pays child support to his two teenage daughters, of whom he lost custody through divorce, and is now repairing the relationship. He states that he owns a welding service and works with tool and die makers that are essential to the auto industry. The spouse states that he believes he could not find a job in this field in Poland, and that as he cannot speak Polish it would be difficult to find any job. He states that he fears he cannot survive financially in Poland, and could not afford the applicant's medical treatments for her back. The applicant describes the difficulty for her to live in Poland, but states that it would be worse for her spouse because he does not speak Polish, there is no work in his occupation, and the economy is weak with Polish people losing their jobs.

Articles about tool and die makers submitted to the record show their importance to the auto industry recovery and a letter from a colleague of the applicant's spouse describes the importance of his welding business. Country information describes workers' rights issues within the Polish economy and indicates there is high unemployment.



We find that the record establishes that the applicant's spouse would experience extreme hardship if he were to relocate to Poland. The record establishes that the applicant's U.S. citizen spouse was born in the United States and has no ties to Poland. Were he to relocate he would have to leave his family, including his mother and his children, for whom he pays child support and with whom he seeks to reestablish a relationship. By relocating the spouse would also have to give up a successful business and be concerned about his financial well-being in light of the high unemployment in Poland and his inability to speak Polish. It has thus been established that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation and the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.