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



U.S. Citizenship  
and Immigration  
Services

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H6

FILE:

Office: FRANKFURT

Date:

**MAR 24 2010**

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

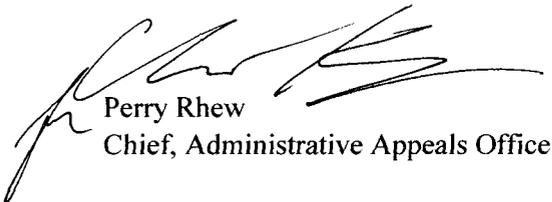
ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).



Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer-in-Charge, Frankfurt, Germany. 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 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 for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States.

The officer-in-charge found that the applicant failed to establish extreme hardship to a qualifying relative and denied the Form I-601 application for a waiver accordingly. *Decision of the Officer-in-Charge*, dated September 24, 2007.

On appeal, the applicant asserts that she, her daughter, and her granddaughter will experience hardship if the present waiver application is denied. *Statement from the Applicant on Form I-290B*, dated October 19, 2007.

The record contains statements from the applicant; medical documentation for the applicant; copies of the applicant's passport, B nonimmigrant visa, and prior Form I-94, Departure Record; a copy of the applicant's daughter's U.S. passport; birth and marriage records for the applicant, and; information regarding the applicant's unlawful presence in the United States. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) 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 Attorney General [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.

The record reflects that the applicant entered the United States as a B-2 visitor for pleasure on February 10, 1999 with authorization to remain until August 9, 1999. The applicant has not asserted, and the record does not reflect, that she changed or extended her B-2 nonimmigrant status. She did not depart the United States until March 19, 2003. Accordingly, the applicant accrued unlawful presence from August 10, 1999 until March 19, 2003, totaling over three years. She now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by her daughter on her behalf. She was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure. The applicant does not contest her inadmissibility on appeal.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. These 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.

On appeal, the applicant asserts that she, her daughter, and her granddaughter will experience hardship if the present waiver application is denied. *Statement from the Applicant on Form I-290B* at 2. The applicant provides that she helps care for her granddaughter, and that she has medical problems that are exacerbated while she resides in Poland. *Id.* The applicant asserts that she has difficulties in Poland including social ostracism and stigmatization. *Statement from the Applicant*, undated.

In an interview in connection with the present waiver application the applicant noted that her husband is a lawful permanent resident of the United States. However, she does not assert that her husband will suffer hardship if she is prohibited from returning to the United States.

Upon review, the applicant has not established that a qualifying relative will suffer extreme hardship if she is prohibited from entering the United States. As noted above, in order to establish eligibility for a waiver under section 212(a)(9)(B)(v) of the Act, the applicant must show that her U.S. citizen or lawful permanent resident spouse or parent will suffer extreme hardship. The applicant has described hardships that she, her daughter, and her granddaughter will suffer if she is not permitted to return to the United States at the present time. However, direct hardship to the applicant, the applicant's daughter, or the applicant's granddaughter may not serve as a basis for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

The applicant reported that her husband is a lawful permanent resident of the United States. However, the applicant has not asserted or shown that her husband will experience hardship should she be prohibited from returning to the United States. In the absence of clear assertions from the applicant, the AAO may not speculate as to hardships her husband may encounter if the present waiver application is denied. In proceedings regarding a 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. As the applicant has not shown that her husband will suffer extreme hardship, she has not established that she is eligible for a waiver.

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. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.