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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

H6

[redacted]

Date: SEP 23 2011 Office: VIENNA, AUSTRIA FILE: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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 Officer-in-Charge, Vienna, Austria, 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 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 in the United States for more than one year and seeking admission within ten years of her last departure from the United States. The applicant is married to a Lawful Permanent Resident of the United States and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States.

The Officer-in-Charge found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer-in-Charge*, dated March 18, 2009.

On appeal, the applicant's spouse asserts that extreme hardship has been established and submits a statement. *See Form I-290 and attachment.*

It is noted that the applicant indicates on the Notice of Appeal or Motion (Form I-290B), that a brief and/or additional evidence will be submitted within 30 days. *Form I-290B*, filed April 28, 2009. The record, however, does not reflect the receipt of this additional evidence. Nevertheless, the record will be considered complete.

The record includes, but is not limited to, statements from the applicant's spouse describing the hardship claim; a medical letter pertaining to the applicant's spouse; copies of checking account statements; and money transfer receipts. The entire record was reviewed and considered in reaching a decision on the appeal.

Section 212(a)(9)(B) 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.

In the present application, the record indicates that the applicant arrived in the United States on January 16, 2000 with a B-2 non-immigrant visa and was admitted until July 15, 2000. The applicant did not depart the United States until September 13, 2002. Therefore, the applicant accrued unlawful presence from July 16, 2000, the day after her authorized stay expired, until November 13, 2002, when she

departed the United States. As the applicant is seeking admission within ten years of her September 13, 2002 departure, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. 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 United States Citizenship and Immigration Services (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*, 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.

In statements submitted in support of the waiver application, the applicant's spouse asserts that he needs the applicant with him because he has health problems, which, he states, cause him extreme hardship and that he needs the applicant to help him get better. The applicant's spouse also states that while he once visited the applicant in Poland once or twice each year, he is unable to work as much as he once did and must choose between buying medicine or a ticket to Poland. He indicates that he financially supports the applicant in Poland and also helps his daughter who is studying there for part of each year. The applicant's spouse asserts that he would like to make it possible for his daughter to do graduate study in the United States and that the applicant would be a great financial help to him.

In support of the applicant's spouse's claims regarding his health, the record contains a medical letter from [redacted] dated October 16, 2008, which establishes that the applicant's spouse has been diagnosed with Gastroduodentitis, Peptic Ulcer Disease, Anxiety associated with Panic Attacks, and Depression. [redacted] states that the applicant's spouse has been under his care for these medical conditions since October 2003 and that he requires regular medical care. However, while the AAO acknowledges that the applicant's spouse has a number of medical conditions for which he is receiving treatment, we note that [redacted] medical statement does not indicate the severity of these medical conditions; what types of treatment they require; how they affect the applicant's ability to perform his daily activities, including his employment; or that he requires any care as a result. Based on the medical evidence in the record, the AAO cannot determine the extent to which the applicant's spouse is impacted by his health conditions or conclude that he requires the applicant to assist him.

The record also includes documentary evidence that establishes the applicant's spouse is providing financial assistance to his family in Poland. This evidence consists of [redacted] statements for the period from May 16, 2008 to October 20, 2008 a joint checking account for the applicant and her spouse, and several money transfer receipts, dated July 28, 2006 to August 20, 2008. While this documentation indicates that the applicant has been receiving financial assistance from her spouse, it does not establish that he is experiencing financial hardship because of their separation. The record fails to document the applicant's spouse's income or expenses in the United States. In the absence of this evidence, his support of the applicant and his daughter in Poland is insufficient proof of financial hardship.

Having considered the record, the AAO acknowledges that the applicant's spouse will experience hardships as a result of his separation from the applicant. We find, however, that the record contains insufficient evidence to establish that these hardships, even when considered in the aggregate, are beyond those normally experienced as a result of separation. Therefore, the applicant has failed to establish that her spouse would suffer extreme hardship as a result of separation.

Regarding hardship in Poland, the applicant's spouse states that he cannot return to Poland because he has better health care in the United States. It is noted that the applicant does not make any other claim of hardship on behalf of her spouse if he relocates to Poland.

As previously discussed, the AAO has found the record to lack the evidence necessary to establish the applicant's spouse's medical needs. It is also noted that the record contains no documentary evidence, e.g., published country conditions reports on health care in Poland, that demonstrates the applicant's spouse would be unable to obtain satisfactory medical treatment in Poland. As a result, the record fails to establish that the applicant's spouse's health would be negatively affected if he joins the applicant in Poland. The AAO finds, therefore, that the applicant has failed to establish that her spouse would suffer extreme hardship if he relocates to Poland to reside with the applicant.

The applicant has not demonstrated that a qualifying relative would experience extreme hardship under section 212(a)(9)(B)(v) of the Act. 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.

In proceedings for application for 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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.