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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

[redacted]

H6

Date: JUL 0 6 2012 Office: VIENNA, AUSTRIA FILE: [redacted]

IN RE: [redacted]

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:

[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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 Field Office Director, Vienna, Austria. 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 in the United States for more than one year and seeking readmission within ten years of his last departure from the United States.[1] The applicant is the spouse of a U.S. citizen and the son of a lawful permanent resident. He seeks a waiver of inadmissibility in order to reside in the United States.

In a decision, dated October 14, 2009, the field office director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse as a result of his inadmissibility. The application was denied accordingly.

In a brief, counsel states that the field office director erred in not considering hardship to both the applicant's spouse and the applicant's mother; that he failed to fully consider many of the hardship claims made by the applicant's spouse; and that he failed to take into consideration the cumulative effect of the hardship on the applicant's family.

The record indicates that the applicant entered the United States without inspection on November 22, 2004. After failing to report for his removal hearing on August 1, 2005 and evading immigration authorities for a year, the applicant was removed from the United States on July 31, 2006. Therefore, the applicant accrued unlawful presence from November 22, 2004 until July 31, 2006. In applying for an immigrant visa, the applicant is seeking admission within ten years of his July 2006 departure from the United States. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

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[1] The AAO notes that the applicant has a criminal record in Poland that includes a 2004 conviction for theft. The field office director noted this criminal record as well but did not make a finding of admissibility under section 212(a)(2)(A) of the Act. Without additional information the AAO cannot determine whether this conviction renders the applicant inadmissible under section 212(a)(2)(A) of the Act for having committed a crime involving moral turpitude. Nevertheless, as the applicant is also inadmissible under section 212(a)(9)(B)(i)(II) of the Act, we will consider the applicant's eligibility for a waiver under section 212(a)(9)(B)(v), which, if shown, would also meet the requirements for a waiver under section 212(h). The AAO will review the applicant's waiver application in accordance with section 212(a)(9)(B)(v) of the Act considering his criminal record as part of the discretionary analysis if necessary.

(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.

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 the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse and mother are the qualifying relatives 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. *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.

The record of hardship includes: medical documentation; two letters from the applicant's spouse's treating psychologist; a copy of the applicant's spouse's health insurance card; letters

from the applicant, his spouse, and numerous family members and friends; a copies of the applicant's spouse's diplomas; phone records; a letter from the applicant's employer; financial records; and documents concerning conditions in Poland.

The applicant's spouse is claiming extreme emotional hardship as a result of separation in that she suffering from depression, she often thinks of ending her life, and she attends regular therapy sessions. The psychological evaluation, letter from the applicant's spouse's treating psychologist, and statements from the applicant's spouse, the applicant, and applicant's spouse's parents support this claim.

The record does not show that the applicant's spouse would suffer extreme hardship upon relocating to Poland. The applicant's spouse is claiming extreme physical hardship, emotional, and financial hardship if she relocated to Poland. The AAO recognizes that the applicant's spouse is suffering from various medical issues, but no documentation has been submitted to show that she would be unable to access the proper medical care for her problems in Poland. Similarly, the record does not show through supporting documentation that the applicant's spouse would be unable to find employment in Poland. The record indicates that the applicant's spouse has a bachelor's of science degree in accounting and a master's of business administration, both from the University of Illinois. The record does not establish that someone with her education would not be able to find employment in her field in Poland. Finally, the AAO recognizes that the applicant's spouse has close family ties to the United States, but the record also indicates that these family members have ties to Poland. Her family is originally from Poland and her father indicates in his letter that he visited Poland. Thus, although hardship would be experienced as a result of the applicant's spouse relocating and separating from her family, the record does not indicate that this separation would be permanent in that she and/or her family would be unable to visit each other. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant must submit documentation to support any claims of hardship. Therefore, the AAO finds that the applicant has not shown that his spouse would suffer extreme hardship as a result of relocating to Poland.

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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

The AAO also finds that the record fails to establish that the applicant's mother would suffer extreme hardship as a result of separation or as a result of relocation. The applicant's mother is claiming extreme emotional hardship as a result of being separated from her son, but the record does not show that she would be unable to visit her son in Poland or that the hardship rises beyond what would normally be expected when a mother is separated from her son. The AAO also makes note that the applicant's mother chose to separate from son when she moved to the United States, leaving him in Poland. The record also fails to establish that the applicant's mother would suffer extreme hardship as a result of relocating to Poland to be with him. As stated above, the record indicates that the applicant's family has substantial ties to Poland and the documentation provided fails to establish that the applicant's mother would suffer extreme hardship upon relocation. Beyond the applicant's mother's statement, the record contains no supporting evidence regarding the hardship the applicant's mother will suffer as a result of the applicant's inadmissibility. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The applicant must submit documentation to support any claims of hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and/or mother caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion. However, we do note that the applicant's case includes significant adverse factors such as entering the United States without inspection, failing to report for a removal hearing, living and working unlawfully in the United States for over one year, and a possible criminal record involving theft.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.