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



U.S. Citizenship
and Immigration
Services

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DATE: **MAR 12 2012** OFFICE: VIENNA, AUSTRIA FILE:

IN RE:

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 Field Office Director, Vienna, Austria, and 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 (INA or the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of departure from the United States. The applicant seeks a waiver of inadmissibility under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v) in order to reside in the United States with his U.S. citizen spouse.

In a decision dated October 16, 2009, the Field Office Director concluded that the required standard of proof of extreme hardship to a qualifying relative was not met and that the applicant did not merit a waiver of inadmissibility as a matter of discretion. The application for a waiver of inadmissibility was denied accordingly.

On appeal, the applicant does not contest his inadmissibility, but states that his spouse will in fact suffer from extreme hardship.

In support of the waiver application, the record includes, but is not limited to letters from the applicant's spouse, a letter from a psychiatrist in Poland and a translation of that letter, documentation of the applicant's spouse's property in the United States, a letter from tenants in the applicant's spouse's properties, a letter from the applicant's stepdaughter, a letter regarding the applicant's stepdaughter's psychological health, federal income tax returns and a sampling of financial documents for the applicant's spouse, and biographical information for the applicant and his spouse.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under INA § 212(a)(9)(B)(i)(II) for having been unlawfully present in the United States for one year or more.

Section 212(a)(9) of the Act provides:

(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 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant entered the United States on June 26, 2004 as a K-1 fiancé. Pursuant to the terms of his visa, he was permitted to remain in the United States until September 24, 2004 unless he married the petitioner for his fiancé visa and filed an application for adjustment of status based on that marriage. The applicant did not marry the petitioner on his fiancé visa and did not depart the United States until June 1, 2007. As such, the applicant accrued over one year of unlawful presence from September 25, 2004 until his departure in 2007 and is inadmissible under INA § 212(a)(9)(B)(i)(II) for a period of ten years from his last departure.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under INA § 212(a)(9)(B)(v), as the spouse of a U.S. citizen. In order to qualify for this waiver, however, he must first prove that the refusal of his admission to the United States would result in extreme hardship to his qualifying relative. The AAO notes that Congress did not include hardship to the applicant's children as a factor to be considered in assessing extreme hardship in cases under INA § 212(a)(9)(B)(v) for waivers of unlawful presence. As such, hardship to the applicant or to the applicant's stepchild will not be separately considered, except as it may affect the applicant's spouse.

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 deportation, 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, 885 (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.*

We observe that 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., *In re 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). All hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

The applicant’s spouse has relocated to Poland with the applicant. The record indicates that the applicant’s spouse is also a native of Poland, but became a U.S. citizen in 1992. She states in various letters in the record that relocation to Poland has caused her financial and emotional hardship. In regards to her emotional hardship, the applicant’s spouse submitted a certificate and letter from Slawomir Fornal, a psychiatrist in Warsaw, stating that she was a patient of the psychiatrist since seven days prior to the submission of this appeal. The psychiatrist diagnosed the applicant’s spouse with generalized anxiety disorder and stated that “she reacts with anxiety in particular when driving a vehicle.” The psychiatrist suggested that the applicant’s spouse refrain from driving vehicles. There is no indication of the basis for the psychologist’s conclusions nor is there any connection drawn between the applicant’s spouse’s anxiety and the inadmissibility of the applicant.

The applicant’s spouse also states that her teenage daughter is suffering hardship because she has been unable to adapt to Poland. The AAO takes note of the daughter’s heartfelt letter in the record; however, hardship to the applicant’s stepdaughter is only relevant to this application to the extent that it creates hardship for the qualifying relative – the applicant’s spouse. The applicant’s

stepdaughter states in her letter that her mother is suffering hardship due to her inability to maintain her properties in the United States. The record also contains a letter from a clinical psychologist stating that the applicant's stepdaughter has had emotional difficulties associated with adapting to a new school and living conditions in Poland. The AAO acknowledges that the applicant's stepdaughter has suffered emotional hardship due to the applicant's inadmissibility; however, the applicant's stepdaughter is not a qualifying relative. Moreover, there is no evidence that the hardship to the applicant's stepdaughter has caused hardship to the applicant's spouse beyond the type of hardship normally experienced by individuals who relocate due to inadmissibility.

The applicant's spouse's documented ties to the United States appear to be limited to her property ownership as she has not submitted any evidence that she has any family members residing in the United States. The applicant's spouse's daughter is 19 years old, but there is no evidence in the file of her citizenship, and the record indicates that she resides in Poland with the applicant. The applicant's spouse states that by not being present in the United States, she is unable to manage her properties appropriately. In support of these statements, the applicant's spouse submitted a letter, listing the names of 12 individuals, stating that they are tenants in applicant's spouse's apartment in Pennsylvania and that they are having problems with maintenance of their apartment since the applicant and his spouse's absence. The letter, which appears to have been written by the applicant or his spouse, also states that the applicant's spouse was present in the United States at the time that the letter was written. The applicant's spouse has also submitted a letter from a realtor, in addition to the deeds for her properties in Pennsylvania, but she does not provide any information regarding why she is unable to obtain a management company to properly manage her properties. Although the applicant's spouse indicated that the applicant helped her maintain her properties when they resided in the United States, she has not provided any evidence of his role. Moreover, the record indicates that she owned the properties prior to her marriage to the applicant and there is no explanation in the record of how the applicant was involved in the maintenance of her properties prior to their marriage. The applicant's spouse did not provide evidence of the current value of her properties and did not give an explanation for why she is unable to sell the properties. Although the applicant's stepdaughter indicates that her mother would like to maintain the homes and pass them on to her eventually, we do not find the inability of the applicant's spouse to maintain investment properties is not extreme hardship. When considered in the aggregate, the hardship that the applicant's spouse is experiencing due to her relocation to Poland does not rise to the level of extreme beyond the common results of inadmissibility. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez*, 96 F.3d at 392 (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch*, 21 I&N Dec. at 631.

In regards to the hardship of possible separation, the applicant has not submitted any evidence. The applicant's spouse and his stepdaughter both state that the applicant has experienced difficulty in her previous marriages and does not have those same difficulties in her present marriage to the applicant. The applicant has not provided any evidence however of the emotional hardship that his spouse would suffer if she was separated from the applicant.

The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative under required under s INA § 212(a)(9)(B)(v). Having found the applicant ineligible for relief under section INA § 212(a)(9)(B)(v), no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section INA § 212(a)(9)(B)(v), the burden of proving eligibility remains entirely with the applicant. 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.