

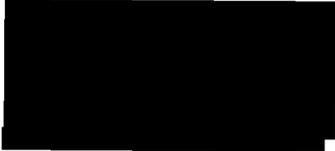
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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DATE: **MAR 20 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:



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 August 7, 2009, the Field Office Director concluded that the required standard of proof of extreme hardship to a qualifying relative was not met and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant does not contest the inadmissibility of the applicant, but states that the hardship to the applicant's U.S. citizen spouse rises to the level of extreme.

In support of the waiver application, the record includes, but is not limited to documentation regarding the applicant's spouse's health, a psychological evaluation and update regarding the applicant's spouse, an affidavit from the applicant's spouse, documentation in support of the applicant's I-130 petition, biographical information for the applicant and his spouse, and documentation of the applicant's immigration history.

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 states that he entered the United States in 2001 without inspection by crossing the U.S. border with Mexico. He remained in the United States until May 11, 2008, when he departed for Poland at his own expense pursuant to a Voluntary Departure Order entered by the Immigration Court in Newark, New Jersey. The applicant had an application for adjustment of status pending from October 31, 2005 until that application was denied on July 9, 2007. The applicant accrued over one year of unlawful presence from his unlawful entry in 2001 until he filed his application for adjustment of status on October 31, 2005 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 child 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 states that she is suffering extreme hardship due to her separation from the applicant. In regards to medical hardship, the applicant’s spouse states that she is undergoing medical treatment and that “according to my psychologist, my husband [REDACTED] is the only person who is able to take care of me.” To document her medical condition, the applicant’s spouse submitted a letter from [REDACTED].¹ That letter states that the applicant underwent eye surgery in 1998 and received follow-up treatment for the few years following the surgery. The letter does not state that the applicant’s spouse is presently undergoing any treatment

¹ The AAO notes the applicant’s counsel’s statement on appeal that the applicant’s spouse’s doctor was incorrectly listed in the waiver denial as [REDACTED], however, this error was not substantive and does not change the determination regarding extreme hardship to the applicant’s spouse. Counsel for the applicant also notes misspellings of the applicant and his spouse’s surname in the waiver denial. The AAO also notes that those misspellings were not material to the outcome of the decision. Counsel for the applicant correctly notes that the date of the applicant and his spouse’s civil marriage was July 7, 2005. As such, the Field Office Director’s conclusion that the applicant’s spouse was not aware of her marriage date was erroneous. That error, however, was not determinative in the outcome of the decision regarding whether the applicant met his burden of proof to establish extreme hardship to his spouse.

for her eye or other condition. Additionally, the doctor's letter indicates that the applicant's spouse requires the applicant's assistance to care for her daughter, but no explanation or documentation is provided regarding this need, or the particular hardships she experiences without his assistance. There is an indication in the record of family ties in the United States, but no explanation that the applicant's spouse's family members who reside in the United States are unable or unwilling to assist her. The applicant's spouse has also submitted a psychological evaluation from March 28, 2008 and a follow-up letter dated March 2, 2009 from the same individuals conducting that evaluation. The psychological evaluation states that the applicant's spouse suffered from emotional and financial hardship due to separation from the applicant. The follow-up letter indicates that the applicant's spouse reported to the individuals conducting the assessment, a licensed social worker and a licensed psychologist, that she experienced loneliness, insomnia, weight loss, hair loss, mood swings, increased use of tobacco, and worried about her daughter's anxiousness. The psychological assessment concluded that the symptoms described by the applicant's spouse indicate "increased anxiety and depressive mood along with maladaptive coping with the uncertainty of her family's future." The AAO respects the opinion set forth in the professional evaluation; however, the conclusions reached therein do not reveal that the hardship to the applicant's spouse is beyond the type of hardship normally experienced by individuals who are separated due to removal or inadmissibility.

The applicant's spouse has not submitted any documentary evidence of financial hardship. The psychological evaluation notes that the applicant's spouse works full-time as a secretary/paralegal in a law office and is the provider for her family. The evaluation indicates that prior to the applicant's departure from the United States, the applicant and his spouse resided with the applicant's spouse's parents in the United States. There is no documentation in the record of the applicant's spouse's income, expenses, or her present living situation. There is also no indication in the record that the applicant's spouse's psychological or medical conditions prevent her from working full-time or caring for her daughter. The AAO is unable to conclude from the evidence submitted that the applicant's spouse would suffer extreme hardship due to separation from the applicant.

The applicant's spouse also states that she would experience hardship if she were to relocate to Poland to reside with the applicant. The record indicates that the applicant's spouse is a native of Poland, speaks Polish fluently, and became a U.S. citizen through naturalization on June 24, 2005. In particular, the applicant's spouse states that she is under medical treatment in the United States. The record indicates that the applicant's spouse underwent surgery on her left eye on July 21, 1998. A letter from [REDACTED] Jersey states that the applicant's spouse is legally blind in her left eye and that this was caused by inadequate treatment in Poland when she was a child. [REDACTED] goes on to make the conclusion that the applicant's spouse is "in jeopardy for blindness if she were to lose her only good eye." Although he states that vision in the applicant's spouse's right eye was 20/40, he does not explain whether that vision is corrected through eye glasses or whether the applicant's right eye is at risk for blindness. Additionally, the record does not make clear what follow-up treatment is needed for the applicant's spouse at this time and if follow-up treatment is needed, how often that treatment is needed, and whether that treatment is available in Poland. The doctor also states that the

applicant's child is genetically at risk for the same condition as her mother, but there is no indication that the child actually suffers from any medical condition. Additionally, there is no birth certificate in the record for the child. Moreover, although the psychological evaluation of the applicant's spouse indicates that the applicant and his spouse have family that resides in the United States, no documentary evidence was provided to show family ties to the United States.

When considered in the aggregate, the hardship that the applicant's spouse would experience as a result of his inadmissibility 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.

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.