

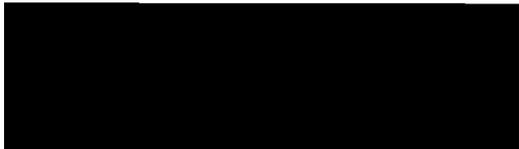
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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



H6

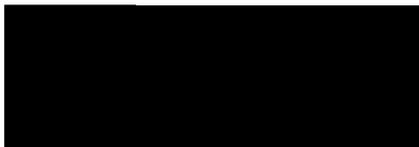
DATE: MAR 21 2012 OFFICE: FRANKFURT, GERMANY

File: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 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.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Frankfurt, Germany. The matter came before the Administrative Appeals Office (AAO) on appeal and the appeal was dismissed. The matter is again before the AAO on motion to reopen. The motion will be granted and the prior decision of the AAO will be reversed. The application will be approved.

The applicant is a native and citizen of Poland who was found to be inadmissible under 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 10 years of his last departure from the United States. 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 with his U.S. citizen spouse and children.

The AAO concluded that while the applicant established that extreme hardship would be imposed on a qualifying relative related to separation, the applicant failed to establish that extreme hardship would be imposed on a qualifying relative related to relocation and dismissed the appeal of the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601). See *Decision of the Administrative Appeals Office*, dated November 17, 2009.

On motion, counsel asserts that in addition to the established extreme hardship related to separation, the applicant's U.S. citizen spouse will suffer extreme hardship specifically related to relocation. See *Form I-290B*, Notice of Appeal or Motion and counsel's addendum, dated December 29, 2009.

The applicant has supplemented the record with Form I-290B and counsel's addendum; counsel's letter in support of motion; hardship affidavit; letter from [REDACTED]; medical records concerning the applicant's spouse's mother; documents concerning the applicant's children; a real estate broker's letter and related listing; and family photos.

The record also contains Form I-601 appeal and denial letter; Forms I-601, I-212 and denials of each; hardship affidavit; mother's affidavit; psychological evaluation and physician's letters; employment letter; birth and marriage records; applicant's visa application, inadmissibility and removal records; and Form I-130. The entire record was reviewed and considered in rendering this decision.

The regulation at 8 C.F.R. § 103.5(a)(2) states, in pertinent part: "A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

In support of the present motion to reopen, the applicant submits extensive documentary evidence described above which counsel asserts will establish extreme hardship to the applicant's spouse were she to relocate to Poland. The AAO finds that the applicant has met the requirements of 8 C.F.R. § 103.5(a)(2), and the motion will be granted and the matter reopened.

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 record reflects that the applicant entered the United States without inspection on October 5, 1997 and was apprehended by U.S. Border Patrol. He was placed into removal proceedings and in February 1998, the immigration judge granted voluntary departure on or before June 2, 1998. The applicant did not depart the United States as ordered and was removed to Poland on April 11, 2006. The applicant accrued unlawful presence from June 11, 1998 until his April 11, 2006 removal. As the applicant was unlawfully present in the United States for more than one year and seeks readmission within 10 years of his April 11, 2006 removal he is inadmissible under section 212(a)(9)(B)(i)(I) of the Act, 8 USC § 1182(a)(9)(B)(i)(I). The applicant does not dispute his inadmissibility.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission would impose 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 or his children can be considered only insofar as it results in hardship to the 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 USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 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 Shaugnessy*, 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, 385 (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 reflects that the applicant's spouse is a 31-year-old native of Poland and citizen of the United States who immigrated to the U.S. when she was 15-years-old with her mother and only sibling, about a year after her father died. The record shows that since her husband's removal in April 2006 the applicant's spouse has suffered major depression, severe anxiety and acute stress disorder resulting in substantial weight loss, difficulty sleeping, crying spells, panic attacks and the need for medication. The record shows that her depression and stress have led to amenorrhea, a medical condition through which the applicant's spouse can no longer menstruate. She states that after her husband was abruptly removed, his construction business failed and creditors sought reimbursement from her. The applicant's spouse states that the only employment she has been able to secure is a job cleaning houses at night for \$250 a week, with which she has tried to repay these debts. The record shows that while the applicant's spouse works at night her two U.S. citizen children are cared for by her lawful permanent resident mother on whom she relies, along with her U.S. citizen sister to help pay her mortgage, bills, and make ends meet in the absence of her husband who, prior to his removal, paid all the bills through his earnings. On appeal, the AAO considered these factors cumulatively and found that the evidence was sufficient to demonstrate that the applicant's U.S. citizen spouse has suffered and would continue to suffer extreme hardship related to the applicant's removal. The AAO has reviewed the record and affirms its previous finding in this regard.

Addressing relocation-related hardship, counsel asserts on motion that the same medical and psychological documentary evidence that established extreme hardship to the applicant's spouse related to separation, establishes extreme hardship in the event of relocation. Supplemental documents from the applicant's spouse's established physician, [REDACTED] have been submitted on motion. [REDACTED] writes in a letter dated December 14, 2009, that the applicant's spouse remains in her care for continued severe reactive stress and major depression, which has caused amenorrhea, and she continues to take Zoloft 100mg once daily for depression. [REDACTED] states that [REDACTED], the applicant's spouse's established psychologist, is also continuing to treat her depression "without success." [REDACTED] states: "It is very important that [REDACTED] continues her treatment with me in the U.S. I believe a move to Poland or any disruption in her health care will cause her health to deteriorate and her conditions to worsen."

The applicant's spouse states that she shares an exceptionally close bond with her widowed mother and sister with whom she immigrated to the United States more than fifteen years ago. She states that the three have become even closer since the applicant's removal as she relies on them both emotionally and financially to survive. The applicant's spouse states that she would suffer extreme hardship if separated particularly from her mother who is suffering from a number of illnesses including severe hypertension and migraine headaches which resulted in her recent hospitalization. Corroborating documentary medical evidence has been submitted on motion. She states that had it been reasonably possible for her to relocate to join her husband, she would have done so over the now nearly six years since his removal given the extreme emotional,

psychological, medical and economic hardship she has suffered throughout his lengthy absence. The applicant's spouse states that her entire immediate and extended family reside lawfully in the United States, including her sister, two U.S. citizen children, and her mother and grandparents who live together just moments away.

The applicant's spouse states that relocating to Poland would cause severe economic hardship as she is barely making ends meet now. She states that she has been trying desperately to sell their home in an effort to discharge her monthly mortgage obligation, but after more than six months on the market no one has even looked at it. A corroborating letter dated December 15, 2009 from real estate broker, [REDACTED] of Fleet Realty, was submitted on motion along with a copy of the detailed listing. The applicant's spouse states that her husband has been unable to secure employment in Poland, and that her own job prospects are dismal given that she never worked before leaving the country as a young teen and has only been able to secure employment in the U.S. cleaning houses. While the evidence is insufficient to establish that the applicant or his spouse would be unable to secure employment in Poland, the AAO acknowledges that the U.S. financial obligations the applicant's spouse has been working hard to meet would likely be left unmet upon relocation.

Assertions have been made concerning hardship to the applicant's children. As discussed above, hardship to the applicant's children can be considered only insofar as it results in hardship to the applicant's qualifying relative – here the applicant's spouse. The applicant's spouse states that her two children are very close to her mother and sister and she cannot imagine them being torn away from their family, friends, schools, sports teams, church, neighbors and life in the U.S. She states that it would be extremely detrimental to their education to start a new school system in a foreign country and in a new language. The applicant's spouse states that watching her children suffer academically and emotionally would cause her to suffer extreme hardship and she believes that her health would seriously deteriorate given that she does not deal with change well and her medical conditions cause her extreme anxiety and nervousness.

The AAO has considered cumulatively all assertions of relocation-related hardship including that the applicant's spouse has not resided in Poland for more than fifteen years, has never been employed in the country, and her close family ties in the United States – particularly to her mother; close ties to other family, friends, church and community; U.S. home ownership and employment; her medical, physical, emotional and psychological condition and the need to continue treatment with trusted longtime physicians who have warned that relocation would be detrimental to her health; economic and job-related concerns in Poland; concerns for her children's emotional and educational well-being which could exacerbate and result in a deterioration of the applicant's spouse's own medical and emotional conditions. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Poland to be with the applicant. Accordingly, the AAO reverses its previous finding concerning relocation.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA

1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra*, is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. See e.g., *Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives)

... *Id.* at 303.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in the present case include extreme hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; the applicant's close family ties, church ties and community ties in the United States; his home ownership and business ownership in the U.S.; and his lack of criminal history. The unfavorable factors are the applicant's entry without inspection, unauthorized employment, period of unlawful presence and failure to voluntarily depart the United States.

Although the applicant's violations of immigration law are significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the application will be approved.

ORDER: The motion is granted, the prior decision of the AAO is reversed, and the application is approved.