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**U.S. Department of Homeland Security**
Citizenship and Immigration Services
*Office of Administrative Appeals*
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090

**U.S. Citizenship and Immigration Services**

DATE: APR 2 5 2013 OFFICE: VIENNA, AUSTRIA File:

IN RE: Applic
AKA:

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), and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under Section 212(a)(9)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)

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 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

**DISCUSSION**: The Form I-601 Application for Waiver of Grounds of Inadmissibility (Form I-601) and the Form I-212 Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) were denied by the Field Office Director, Vienna, Austria, and are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Poland. He 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 one year or more and seeking admission within 10 years of his last departure from the United States. The applicant also was found to be inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien previously removed and seeking admission within the proscribed period since his removal. The applicant is the son of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. 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) and an exception pursuant to section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), in order to reside in the United States with his mother and stepfather.

The Field Office Director concluded the applicant failed to establish extreme hardship would be imposed on a qualifying relative and denied the Form I-601 and Form I-212 accordingly. *See Decision of the Field Office Director*, dated August 20, 2012.

On appeal, the applicant's mother requests reconsideration of the denial decision, because she "did not notice a scroll bar" in the e-mailed information she received and "missed the requirement that [she] provide documented evidence of 'extreme hardship' to support the Form I-601." *Form I-290B, Notice of Appeal or Motion*, dated September 13, 2012.

The record includes, but is not limited to: a letter of support from the applicant's mother and stepfather; identity, medical, employment, and financial documents; the applicant's stepfather's last will and testament; and court documents.[1] The entire record, with the exception of the Polish-language documents, was reviewed and considered in rendering a decision on the appeal.

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[1] The AAO notes the record contains some documents in the Polish language. 8 C.F.R. § 103.2(b)(3) states:

> Translations. Any document containing foreign language submitted to USCIS shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

As certified translations have not been provided for all of the foreign-language documents, as required by 8 C.F.R. § 103.2(b)(3), the AAO will not consider these untranslated documents in support of the appeal.

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

> (B) Aliens Unlawfully Present.-
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> (i) In General.- Any alien (other than an alien lawfully admitted for permanent residence) who-
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> ...
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> (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.
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> ...
>
> (v) Waiver.-The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 [Secretary] 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 [Secretary] regarding a waiver under this clause.

The record establishes the applicant was admitted to the United States upon presentation of an H-1B nonimmigrant visa on June 9, 1997, with permission to remain until April 1, 2000. A Notice to Appear (Form I-862) was filed with the Executive Office for Immigration Review (EOIR) on November 30, 2000, charging the applicant with removability pursuant to section 237(a)(1)(C)(i) of the Act, 8 U.S.C. § 1227(a)(1)(C)(i). On June 1, 2001, the immigration judge granted the applicant voluntary departure to occur on or before September 29, 2001. The record indicates the applicant did not timely depart, and thereby, his voluntary departure order became a final order of removal.

On October 17, 2005, the applicant filed with the U.S. Citizenship and Immigration Services (USCIS) an Application to Register Permanent Residence or Adjust Status (Form I-485), which USCIS administratively closed on October 7, 2006, as he was subject to a final removal order. The record reflects the applicant was removed on August 3, 2006, pursuant to the final order of removal, and he has remained outside the United States to date. The applicant accrued unlawful presence from April 2, 2000 until August 3, 2006, a period in excess of one year. As the applicant is seeking admission within 10 years of departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

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 and his

stepfather can be considered only insofar as it results in hardship to a qualifying relative. The applicant's parent is the only demonstrated 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-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 of Immigration Appeals (the BIA) 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 U.S. 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 BIA 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 BIA 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; *In re 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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin,* 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In re 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 v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 applicant's parent and stepfather contend: they are 76 and 95 years-old, respectively; they need the applicant to help with everyday chores, such as driving to the doctor's office and shopping; and their health is deteriorating as the applicant's mother has a cataract and "a variety" of health problems, and his stepfather had a stroke, is being treated for prostate cancer, and his heart is being affected by an arrhythmia, blood pressure, and his thyroid. The applicant indicates he regrets leaving the United States as he made "good money"- $60,000 annually- and was able to support his family.

Although the applicant's parent and stepfather may be experiencing hardship in the applicant's absence, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by a qualifying relative of inadmissible individuals. The record is sufficient to establish has been the applicant's mother and stepfather's treating physician for about 10 years, and the applicant's mother suffers from chronic shoulder pain. The record also is sufficient to establish the applicant's stepfather is receiving regular treatment for prostate cancer and was recently treated for a stroke. However, the record does not include evidence of the applicant's mother's additional self-reported health problems, her current mental health, or a discussion concerning any treatment for her physical and mental health conditions. Absent an explanation in plain language from the treating physician or mental health professional of the nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical or mental health condition or the treatment needed. 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)).

Additionally, the record establishes the applicant paid Social Security and Medicare taxes from his earnings when he was in the United States. However, the record does not include evidence showing that the applicant's mother and stepfather financially depend on the applicant. Moreover, the record does not include evidence of labor or employment conditions in Poland, indicating the applicant's inability to contribute to the maintenance of his and his mother's households. Accordingly, the AAO cannot conclude the record establishes the applicant's mother's financial hardship would go beyond the normal consequences of inadmissibility.

The AAO notes the concerns regarding the applicant's parent's hardship, but finds even when evidence of this hardship is considered in the aggregate, the record fails to establish she would suffer extreme hardship as a result of separation from the applicant.

Further, the applicant's appeal does not address whether his mother would experience extreme hardship if she were to relocate to Poland to be with the applicant. The AAO notes the record does not include evidence to show whether she maintains familial, social, or financial ties there. Also, the record does not include evidence of social, political, or economic conditions in Poland and how they would impact the applicant's mother. As extreme hardship upon relocation has not been addressed, the AAO concludes that the record fails to establish the applicant's parent would suffer extreme hardship as a result of relocation.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds the applicant has failed to establish extreme hardship to his U.S. citizen parent as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

The AAO notes the Field Office Director denied the applicant's Form I-212 in the same decision. *Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, no purpose would be served in granting the applicant's Form I-212.

**ORDER:** The appeal is dismissed.