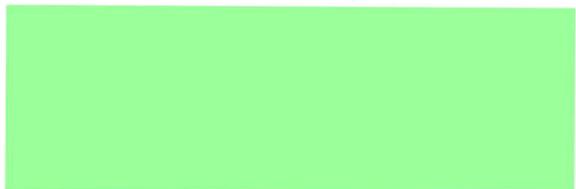


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U.S. Citizenship  
and Immigration  
Services



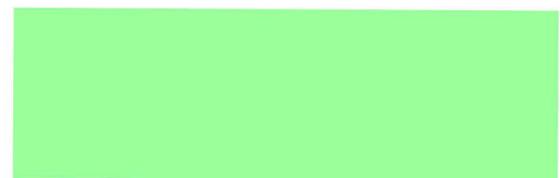
DATE: FEB 20 2013 Office: VIENNA, AUSTRIA

FILE:

IN RE: Applicant:

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 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 with the field office or service center that originally decided your case by filing a 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 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 one year or more and seeking readmission within 10 years of her last departure from the United States.<sup>1</sup> The applicant's mother is a United States citizen and she seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated September 23, 2011.

On appeal, the applicant's counsel asserts that the applicant's mother would experience extreme hardship if the applicant is not granted a waiver of inadmissibility. *Brief in Support of Appeal*, dated November 21, 2011.

The record includes, but is not limited to, counsel's brief, the applicant's statements, the applicant's mother's statements, concerned party letters, medical records for the applicant's mother, financial records and various immigration application forms. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(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

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<sup>1</sup> The applicant was also found to be inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii) as an alien who has ordered removed under section 240 or the Act, or any other provision of law and who seeks readmission within 10 years of such alien's removal from the United States. The AAO notes that the field office director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) in the same decision. Counsel filed a separate Form I-290B based on a finding of inadmissibility pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act, §. 8 U.S.C. § 1182(a)(9)(A)(ii) . A separate decision on the appeal of the (Form I-212) will be rendered.

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 [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.

The record reflects that the applicant was admitted to the United States on December 21, 1986 as a B-2 visitor for pleasure, with authorization to remain for a maximum period of six months. The applicant filed for asylum on February 26, 1988. The applicant's asylum case was denied by an Immigration Judge on March 4, 1998 and she was then granted voluntary departure until September 1, 1998. An appeal of the decision was dismissed on June 13, 2000 by the Board of Immigration Appeals. The applicant filed a Petition for Review with the U. S. Seventh Circuit Court of Appeals, which was also dismissed on September 1, 2000. The applicant did not depart the United States voluntarily after her Petition for Review was dismissed, and accrued unlawful presence in excess of one year, until her removal on January 8, 2010. The applicant was thus found to be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant does not contest inadmissibility. The AAO concurs in the finding of inadmissibility based on section 212(a)(9)(B)(i)(II) of the Act.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and her children can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's mother is the only qualifying relative.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (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 1292 (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 indicates that her qualifying relative is suffering extreme hardship due to the applicant's inadmissibility. The applicant submitted evaluation reports from a psychologist and clinical social worker in support of this assertion which indicate that the qualifying relative suffers

from anxiety disorder and depression. The applicant also submits letters from, [REDACTED] [REDACTED] dated November 7, 2011 and, [REDACTED] Center for Pain Management Tarnow, Poland, dated May 26, 2010 indicating that the qualifying relative suffers from a host of other medical complications including hypertension, asthma, and arthritis, which require constant care. The applicant indicates that the qualifying relative is unable to receive routine care in the United States because she cannot afford medical insurance without the applicant's presence. The applicant further indicates that her mother returned to Poland in order to receive regular medical care in 2005, but came back to the United States in order to assist with the household after the applicant's removal. The applicant also suggests that the qualifying relative cannot relocate to Poland because she would not want to leave her grandchildren without their parents in the United States.

The applicant also indicates that the qualifying relative is suffering financial hardship because of the applicant's inadmissibility and is unable to maintain the mortgage for the family home in the United States. The applicant states further that the family home is going into foreclosure due to the lack of payment on the mortgage, and other bills have been left unpaid. The applicant indicates that she is only able to work odd jobs in Poland and cannot send money to help support her family in the United States.

The record does not support a finding that separation from the applicant has caused extreme hardship to the qualifying relative mother in this case. The applicant indicates that separation is causing hardship to her mother because she cannot obtain medical insurance to attend her health issues while in the United States without the applicant. However, there was no documentary evidence submitted to demonstrate that the applicant ever previously supplied her mother's medical insurance needs while they were both present in United States. In addition, although the letter from the doctor in Poland indicates that the qualifying relative was receiving around the clock treatment for her health complications, nothing was submitted into the record to establish who is now providing this intensive care while she is living in the United States. Moreover, while the various professional evaluations indicated that the qualifying relative is suffering from difficulties such as, anxiety disorder and depression, the record is insufficient to establish the severity of harm, or how these conditions rise to a level beyond that which would be expected under the circumstances of a close relatives inadmissibility. In addition, the qualifying relative voluntarily lived separately from the applicant for a number of years in the reverse fashion, with no hardship indicated during that time.

Additionally, although the psychological evaluation and numerous letters from interested individuals focused a great deal on the effects the applicant's inadmissibility is having on her children, in an assessment of extreme hardship for a waiver of inadmissibility the emphasis must be placed on hardship to the qualifying relative. The hardships of the applicant's children may only be considered based on their effects on the qualifying relative, in this case, the applicant's mother. While we acknowledge that the children are facing challenges in their lives due to the applicant's inadmissibility, the record does not support a finding that the effect of these hardships on the qualifying relative is extreme in nature. None of the letters submitted indicate any information as to how the applicant's children's difficulties have affected their grandmother and the psychological evaluation does not indicate any effect on the grandmother which could be considered extreme.

The evidence also does not support the statements that the qualifying relative is suffering financial hardship due to the applicant's inadmissibility. There have been no documents provided to objectively indicate the level of financial distress the applicant's mother is currently undergoing without the applicant's presence in the United States. The evidence submitted indicates that the applicant's two adult children have been primarily responsible for the financial obligations of the household since the applicant was found inadmissible, with no documentation presented to support any financial contributions by their grandmother. Although the documentation indicates that the applicant's daughter [REDACTED] is struggling financially to meet the family's living expenses in the United States, there was no significant information provided to explain how the financial struggles of her grandchildren, [REDACTED] in particular, have impacted the qualifying relative. The applicant indicates that her inadmissibility is causing her mother to suffer financial hardship because while in Poland, she can only work odd jobs and cannot therefore contribute to the household in the United States. However, there was no specific information provided regarding the income she is currently earning while in Poland or the level of expenses she is currently maintaining in that country.

The applicant additionally did not offer sufficient evidence to demonstrate that the qualifying relative would suffer extreme hardship upon relocation if she chose to return to Poland and live with the applicant. The applicant's mother was born in Poland and as stated, chose to return there in recent years to receive her medical care. According to the evidence submitted, the applicant's mother was in fact receiving regular medical care in Poland while living there as recently as 2010. Further, despite her claim of living in the United States for many years, the record indicates that the applicant's mother speaks little English and there is no evidence of a strong connection to the United States. The record also contains several statements indicating that she always planned to return to Poland. Moreover, although the applicant's mother indicates she is reluctant to leave her grandchildren in the United States alone, it is noted that two of these children are adults, and according to the evidence presented, are working to provide the majority of the income to cover household expenses, and, are caring for themselves with no apparent assistance from their grandmother. It has therefore not been demonstrated that any hardship to the qualifying relative cumulatively rise to the level of extreme.

As the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act, no purpose would be served in determining whether she merits a favorable exercise 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

**ORDER:** The appeal is dismissed.