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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: MAR 21 2013 OFFICE: VIENNA FILE:

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(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:

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 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 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 country for more than one year and seeking readmission within ten years of his departure from the United States. The applicant was also found to be inadmissible under section 212(a)(9)(A) of the Act, 8 U.S.C. § 1182(a)(9)(A), for seeking readmission after having been removed under an outstanding order. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130). He 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 live in the United States with his U.S. citizen spouse.

The director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director,* dated August 16, 2012.

On appeal, counsel asserts the director's decision was "blatantly wrong" and "ignored significant facts" showing that the applicant's spouse would suffer extreme hardship if the waiver application is not approved. Counsel also submits new evidence on appeal. *See Form I-290B, Notice of Appeal or Motion* (Form I-290B), received September 21, 2012, *and counsel's letter.*

The record contains, but is not limited to: Form I-290B and counsel's letter; Form I-601; Form I-130; Form I-589, Application for Asylum and Withholding of Deportation; Board of Immigration Appeals (Board) and an immigration judge's decision; a psychological evaluation; employment documentation; a statement by the applicant's spouse; medical documentation; prior counsel's disciplinary documentation; articles about the immigration judge who decided the applicant's asylum case; tax returns; a house deed; letters from friends; and marriage, divorce and birth certificates. 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:

> (i) [A]ny alien (other than an alien lawfully admitted for permanent residence) who-
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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.

The record reflects that the applicant entered the United States on July 24, 1993 as a visitor. His application for asylum was denied by an immigration judge and he was ordered to voluntarily

depart the United States by April 3, 1996. The applicant appealed the decision, and the Board concurred with the immigration judge's decision on January 6, 1997. The Board granted the applicant 30 days to voluntarily depart. The applicant remained in the United States until he was taken into custody on September 23, 2008 and removed on November 15, 2008. The applicant was unlawfully present in the United States for over one year between April 1, 1997 and his removal in 2008. The record supports the inadmissibility finding pursuant to section 212(a)(9)(B)(i)(II) of the Act, and counsel does not contest the applicant's inadmissibility.

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

> Waiver.-The [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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, which includes the U.S. citizen or lawful permanent resident spouse or parent of the applicant. In the present case, the applicant's spouse is the only qualifying relative. 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,* 22 I&N Dec. 560, 565 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 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).

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 v. I.N.S.*, 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's spouse is a 63 year-old native of Poland and citizen of the United States. She states that she lived with the applicant since 1998; they bought their home in April 2001 and were married on May 8, 2008. She became a permanent resident in April 2005 and a U.S. citizen in May 2010. She indicates that the applicant is her "best friend," "rock" and her "life." Since the applicant's deportation in 2008, she reports that her health has declined. Medical documentation indicates that the applicant has depression, thyroid disorder, anxiety, insomnia and more recently hypertension and hyperlipidemia. The applicant's spouse indicates that her travels to Poland to visit the applicant have become exhausting and detrimental to her health. A letter from her doctor indicates that her "insomnia and anxiety have increased in severity and she now has a significant problem with concentration and forgetfulness."

A psychologist also diagnosed the applicant's spouse with clinical depression and posttraumatic stress disorder. Her symptoms include social isolation, anxiety, feelings of hopelessness, pessimism about the future, loss of energy, problems with sleep and appetite, and sadness. The

applicant's spouse states she feels afraid for her safety and worries about the applicant. Through her psychologist, she states that since the applicant's deportation, she constantly fears a break-in and cannot sleep as a result. The psychologist notes that her "heightened sense of vulnerability" relates to the trauma of being abused by her first husband. He indicates that her trauma resonates with the applicant's removal and makes it "even more painful than for an individual who had not experienced so many difficult life experiences."

The applicant's spouse states that after the applicant's removal, her employment hours decreased because of her declining health. A letter from her employer and documents in the record indicate that she works as a self-employed housekeeper. Through her psychologist, the applicant's spouse indicates that she reduced her work hours by half and has not attempted to find new clients. She estimates her yearly income to be $10,000, as opposed to between $15,000 and $20,000 she earned annually when she worked full-time. She indicates that she pays for her expenses and also sends money to the applicant, as he is unemployed in Poland and receives retirement income from the Polish government of approximately $300 per month. During a consular interview in Warsaw, the applicant indicated that neither of them sends money to each other, and he receives a monthly pension of approximately $500.

The psychologist asserts that according to the Self-Sufficiency Index of Pennsylvania, the applicant's spouse lives on half the income calculated as the minimum amount a single person in Philadelphia County, where the applicant's spouse lives, would need to survive without government assistance. *See* http://www.selfsuffiencystandard.org/pubs.html. The applicant's spouse states that before the applicant's deportation, he had a successful painting business and they lived comfortably. The psychologist reports that according to the applicant's spouse, their annual family income was between $35,000 and $45,000. The psychologist concludes that an unexpected expense for the applicant's spouse "would become a major crisis." The record contains the applicant's tax returns for years 2005 to 2007, indicating the applicant's income before marrying his spouse in 2008 was approximately $6,000 per year. The record does not contain any other evidence of the applicant's or his spouse's income, expenses, remittances or any other financial information. 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)).

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse, including the emotional strain of being separated from the applicant, her fragile mental state, and her loss of income after the applicant's removal and her decline in work. Although the AAO acknowledges the difficulty in being separated from the applicant and the mental strain it causes, the evidence presented, considered in the aggregate, is not sufficient to demonstrate that the applicant's U.S. citizen spouse suffers extreme hardship.

The applicant's spouse states that, having lived in Poland, she knows her health conditions would not be properly treated there. She indicates that she could not afford her medications there, given their lack of financial resources in Poland. The record contains contradictory evidence from the applicant's consular interview in Warsaw, during which he claimed to purchase the applicant's

prescriptions in Poland and send them to her in the United States to assist her financially. The record does not contain evidence of prescription receipts or the quality and expense of health care in Poland.

The applicant's spouse also indicates that it would be difficult for her to find employment in Poland because no positions exist for people her age. Counsel asserts that the occupation of housekeeping "practically does not exist in Poland as people in poor countries do not have cleaning persons," while the psychologist finds it likely that there may be a "significant level of competition for house cleaning jobs in Poland." Although online searches for housekeeper advertisements in Poland that have no results were submitted as evidence, this evidence does not establish that this occupation is nonexistent or, conversely, in high demand.

The psychologist reports that two of the applicant's spouse's siblings, her children, and her elderly mother live in Poland, although she does not have a close relationship with her siblings. He indicates that the applicant's spouse feels anxious when she visits Poland, despite being happy to see the applicant, because of the trauma she suffered there. The psychologist describes her life with an abusive ex-husband who she cared for until his death and her life of poverty as a single mother before she immigrated to the United States.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse, including her length of residence in the United States, her community ties in the United States, her loss of employment, her health conditions, and her mental state. Although the AAO acknowledges the struggles the applicant's spouse faced in Poland in the past, the evidence presented is not sufficient to demonstrate she would suffer hardship beyond what is typical of those who would relocate to live with an applicant who is deemed inadmissible.

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. 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. Accordingly, the appeal will be dismissed.

The AAO notes that the 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. *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.