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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VIENNA, AUSTRIA Date: APR 27 2004

IN RE: [redacted]

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, 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 by a consular officer to be inadmissible to the United States under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(6)(C)(i) and 1182(a)(9)(B)(i)(I), for having procured entry into the United States by fraud or willful misrepresentation and having been unlawfully present in the United States for more than 180 days. The applicant is married to a naturalized 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(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *See* Decision of the Officer in Charge, dated April 25, 2003.

On appeal, the applicant states that she is living in a small provincial town without any relatives. She asserts that she is unable to secure employment and that the building she is residing in is recommended for demolition. *See* Notice of Appeal, dated May 15, 2003.

In support of these assertions, the applicant submits a copy and translation of a physician's certificate, dated May 9, 2003; copies of maps of the town where she resides; a copy and translation of the opinion of municipal authorities regarding the building that she owns and resides in; a letter from the applicant's spouse, undated; a copy of the naturalization certificate of the applicant's spouse; a copy of a letter from a physician treating the applicant's spouse, dated January 17, 2003; a copy and translation of the Polish birth certificate of the applicant's spouse and a copy of the marriage certificate of the couple. The entire record was considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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-

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure or removal, . . . is inadmissible.

. . . .

(v) Waiver. – The Attorney General [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 Attorney General [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.

On May 12, 1999, the applicant entered the United States with a fraudulently obtained visitor visa. The applicant was authorized to remain in the United States until November 11, 1999. The applicant remained in the United States beyond her period of authorized stay. The applicant, therefore, accrued unlawful presence from November 12, 1999, the start of her unauthorized presence in the United States, until October 18, 2000, the date of her departure from the United States. As a result, the applicant was inadmissible to the United States under section 212(a)(9)(B)(i)(I) of the Act for having been unlawfully present in the United States for a period of more than 180 days. Pursuant to section 212(a)(9)(B)(i)(I) of the Act, the applicant was barred from again seeking admission within three years of the date of her departure. More than three years have passed since the applicant departed from the United States; she is, therefore, no longer inadmissible as a result of her unlawful presence.

The record reflects that the applicant presented fraudulent documents regarding her employment when she applied for a nonimmigrant visitor visa at the American Consulate in Warsaw, Poland on February 12, 1999. The applicant is, therefore, inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's husband. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

The applicant states that she is living in a dilapidated building and is unable to secure employment in the small town in which she resides in Poland. *See* Notice of Appeal from Marzena Ewa Malczyk, dated May 15, 2003. She indicates that visiting her is a large expense for her husband and that he cannot afford to assist her financially with her housing situation. *Id.* The record does not establish that the applicant is unable to live in a metropolitan area of her home country with access to increased job opportunities and improved living conditions. Further, the record does not demonstrate financial hardship to the applicant's husband in any measurable manner. The applicant does not provide evidence of her husband's income or his expenses related to her presence in Poland. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The applicant submits a letter from a physician treating her spouse to support the proposition that the applicant's spouse suffers emotional hardship as a result of separation from the applicant. The physician treating the applicant's spouse states that he suffers from "nervousness, insomnia and depression." *See* Letter from William Kropinicki, MD, dated January 17, 2003. The physician indicates that the separation of the applicant from her spouse "*could* lead to further health problems" for her spouse (emphasis added). *Id.* The AAO notes that the record does not establish the nature or extent of treatment provided to the applicant's spouse to address his condition. The record does not demonstrate whether the prescribed treatment assists the applicant's spouse and it does not indicate the status of his medical condition over time. A finding of extreme hardship is not warranted by a statement of the symptoms of the applicant's husband and the speculative observations of his physician standing alone.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra,* held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The AAO recognizes that the applicant's husband endures hardship as a result of separation from the applicant. However, his situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.