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U.S. Citizenship
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FILE:

[REDACTED]

Office: SAN FRANCISCO, CA

Date:

MAY 19 2006

IN RE:

[REDACTED]

APPLICATION:

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

ON BEHALF OF APPLICANT:

[REDACTED]

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, California. 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 Ireland who was determined 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 more than one year. The applicant is the spouse of a citizen of the United States and 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 reside in the United States with his spouse.

The district director 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. *Decision of the District Director*, dated May 18, 2004.

On appeal, counsel contends that Citizenship and Immigration Services failed to consider all of the relevant factors presented in the application and thus reached an erroneous determination that the applicant's spouse would not suffer extreme hardship if the applicant were removed from the United States. *Brief in Support of Appeal from the Decision Denying Respondent's Application for an I-601 Waiver of Inadmissibility*, dated June 21, 2004. The entire record was reviewed and considered in rendering a decision on the applicant's 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-
 - (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, or
 - (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 [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 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.

In the present application, the record indicates that the applicant entered the United States on January 3, 2001 as a WT visitor. On April 15, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). Also in April 2003, the applicant obtained advance parole authorization and subsequently departed from the country and re-entered on June 13, 2003.

The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General [now Secretary of Homeland Security (Secretary)] as a period of stay for purposes of determining bars to admission under section 212 (a)(9)(B)(i)(I) and (II) of the Act. *See Memorandum by Johnny N. Williams, Executive Associate Commissioner, Office of Field Operations dated June 12, 2002.* The applicant accrued unlawful presence from the date of expiration of his authorized stay in the United States until April 15, 2003, the date of his proper filing of the Form I-485. By departing from the United States, the applicant triggered unlawful presence provisions under the Act. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year. Pursuant to section 212(a)(9)(B)(i)(II), the applicant was barred from again seeking admission within ten years of the date of his departure.

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 the alien himself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's spouse. 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 (BIA 1999) provides a list of factors the Board 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.

Counsel contends that the applicant's spouse would suffer extreme hardship if she relocated to Ireland in order to remain with the applicant. Counsel states that the applicant's spouse is a native-born United States citizen and that her entire family lives in the United States. *Brief in Support of Appeal from the Decision Denying Respondent's Application for an I-601 Waiver of Inadmissibility* at 3. Counsel indicates that the mother of the applicant's spouse suffers from emphysema and that the sister-in-law of the applicant's spouse

suffers from breast cancer. *Id.* at 4. Counsel asserts that because the applicant's spouse is a nurse, she is able to assist her mother and sister-in-law more thoroughly than other family members. While the AAO acknowledges that the record contains documentation verifying the medical conditions of the mother and sister-in-law of the applicant's spouse, the record fails to establish the level of care required by these relatives on a daily basis as a result of their ailments. See *Letter from* [REDACTED] dated March 16, 2004; see also *Kaiser Permanente Medical report for* [REDACTED] dated August 22, 2002. In the absence of substantiating documentation, the record fails to establish that the presence of the applicant's spouse is required for the daily functioning of her mother and sister-in-law and that an inability to provide care for these relatives will impose extreme hardship on the applicant's spouse. Counsel further contends that relocating to Ireland will require the applicant's spouse to give up her profession and experience a decreased standard of living. *Brief in Support of Appeal from the Decision Denying Respondent's Application for an I-601 Waiver of Inadmissibility* at 3. The record fails to establish that the applicant's spouse would be unable to work as a nurse in the applicant's native country and the record does not offer documentation establishing the standard of living in Ireland. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Moreover, the record fails to establish that the applicant's spouse would suffer extreme hardship if she remains in the United States in the absence of the applicant in order to continue residency in her native country and maintain proximity to family members. Counsel indicates that the applicant and his spouse suffered the loss of their first child on March 29, 2004. See *Declaration of* [REDACTED] dated April 7, 2004. While the AAO acknowledges the grief associated with such a loss and empathizes with the plight of the applicant and his spouse, the record fails to establish that waiving the inadmissibility of the applicant will alleviate the grief associated with the loss of the couple's child. The assertions made by counsel in regard to this situation center on the devastation associated with the temporal proximity of the loss of the child and the receipt of the decision of the district director. See, e.g., *Brief in Support of Appeal from the Decision Denying Respondent's Application for an I-601 Waiver of Inadmissibility* at 2 ("The couple is devastated by this tragedy and it is clear that separation from one's husband at such a difficult time is not simply a normal consequence of deportation."). As approximately two years have elapsed since the rendering of the district director's decision, the assertions of counsel standing alone fail to be persuasive. In the absence of substantiating documentation, including, but not limited to evidence of a continuing relationship with a mental health professional in relation to the loss, the AAO is unable to make a finding of extreme hardship on this basis.

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. Moreover, the AAO notes that 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 AAO recognizes that the applicant's spouse would endure hardship as a result of separation from the applicant. However, her 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.