identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., NW, Rm. 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

H2

FILE: [redacted] Office: CHICAGO, IL Date: MAR 03 2009

Relates)

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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by the District Director, Chicago, Illinois and 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 found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure admission into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen and 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 spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated August 16, 2006.

On appeal, counsel contends that Citizenship and Immigration Services (the Service) erred as a matter of law and abused its discretion in finding that the applicant had failed to establish extreme hardship to her qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B,* dated July 10, 2006; *Counsel's brief.*

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, a bill of sale for property; a statement by the applicant's spouse; a statement by the applicant; tax statements for the applicant and her spouse; apartment leases; bank statements for the applicant and her spouse; and telephone bills. The entire record was reviewed and 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.

The record reflects that on January 9, 2000 the applicant attempted to gain admission to the United States through the Visa Waiver Pilot Program using an Irish passport with the name of [redacted] *Form I-275, Withdrawal of Application for Admission/Consular Notification.* During the primary inspection interview, the applicant stated that she had previously entered the United States through the Visa Waiver Pilot Program for a period of two weeks. *Id.* During secondary inspection, the applicant admitted that she had been in the United States from May 16, 1999 to December 20, 1999 and had overstayed her period of admissibility by four months. *Id.* On April 3, 2001 the applicant again gained admission to the United States through the Visa Waiver Pilot Program by presenting an Irish passport in the name of [redacted]. *Form I-94W, Departure Record; Passport.* According to the District Director's decision, the applicant stated that [redacted] is the English equivalent to her legal Irish/Gaelic name of [redacted] *Decision of the District Director*, dated August 16, 2006. Based on her misrepresentation during her primary inspection on January 9, 2000 and her presentation of a passport in a different name at the port of entry on April 3, 2001, the applicant is inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality 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. The plain language of the statute indicates that hardship that the applicant would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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 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 family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established whether he resides in Ireland or the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse returns with the applicant to Ireland, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth certificate.* Although his parents were born in Ireland, they reside in the United States. *Form*

*G-325A, Biographic Information sheet, for the applicant's spouse.* The applicant states that her spouse is an electrician who is planning to join his father's business. *Statement from the applicant*, undated. Without the help of the applicant's spouse, his father will find it extremely hard to continue his business because his other son is in college pursuing a different career. *Id.* The applicant further states that her spouse has been educated and trained as an electrician in the United States and would have to be retrained in Ireland. *Id.* She states that even if he were able to get into a training program in Ireland, there would be no guarantee that he would get work. *Id.* While the AAO acknowledges the assertions of the applicant, it notes that the record fails to include published country conditions reports that establish the nature of the economy and employment opportunities in Ireland. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)). Furthermore, there is nothing in the record to indicate that the applicant's spouse would be unable to obtain employment in a different field. The applicant also notes that it would be difficult on her spouse's parents if her spouse left the United States. *Statement from the applicant*, undated. While the AAO acknowledges these difficulties, it notes that *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. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Ireland.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in and his parents reside in the United States. *Birth certificate; Form G-325A, Biographic Information sheet, for the applicant's spouse.* The applicant states that her return to Ireland would have a huge financial impact on her spouse as they have purchased half of an Irish bakery and grocery store, borrowing $41,500.00. *Statement from the applicant,* dated April 18, 2006. The applicant asserts that she works full-time in the shop and her salary goes to repay the loan, that her spouse could not work full-time in her place and that the shop could not continue in business with only one partner working. *Id.* Her removal, the applicant contends, would leave her spouse with sole responsibility for repaying their $41,500 loan and in a financial mess. *Id.* The AAO notes, however, that the record does not contain documentary evidence to support the applicant's claims. While it includes a bill of sale for a Park Ridge, Illinois property, it does not include documentation of the $41,500 loan claimed by the applicant, nor does it indicate the terms of repayment for that loan. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici, supra.* The AAO notes that the applicant's spouse primarily works as an electrician. *Form G-325A, Biographic Information sheet, for the applicant's spouse.* There is nothing in the record to show that the applicant's spouse would be unable to repay the loan from his employment as an electrician or that the applicant would be unable to obtain employment upon return to Ireland and assist her spouse in repaying their loan.

The applicant states there would be emotional devastation from tearing apart her marriage. *Statement from the applicant*, undated. The AAO acknowledges these emotions. However, 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). As previously noted, *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. Separation from a loved one is a normal result of the removal process. The AAO recognizes that the applicant's spouse will endure hardship as a result of his separation from the applicant. However, the record does not distinguish his situation, if he remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in 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)(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.