U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

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FILE: [redacted] Office: LONDON Date: AUG 17 2006

IN RE: [redacted]

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:

[redacted]

PUBLIC COPY

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Officer in Charge, London, United Kingdom, denied the waiver application. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Ireland who was found 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 and seeking readmission within 10 years of his last departure from the United States. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The record shows that, on February 26, 1997, the applicant was admitted to the United States as a Visa Waiver Pilot Program (VWPP) nonimmigrant until May 27, 1997. The applicant remained in the United States and engaged in unauthorized employment until December 1998. On January 13, 1999, the applicant applied for admission to the United States at the Dublin, Ireland, Pre-Flight Inspections. The applicant presented a passport issued under his Gaelic name [redacted] Immigration officers placed him in secondary inspection where it was determined that he had overstayed a previous entry under the VWPP. The applicant was found to be inadmissible for accruing more than 180 days of unlawful presence. The applicant was, therefore, denied pre-clearance and admission to the United States. On February 22, 2000, the applicant entered the United States via the Detroit, Michigan Port of Entry from Canada. The applicant paid a truck driver to smuggle him across the border. The applicant reentered the United States without lawful admission or permission to reapply for admission. On July 24, 2002, the applicant married his spouse, [redacted] a naturalized U.S. citizen. On October 25, 2002, [redacted] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. On August 7, 2003, the Form I-130 was approved. In July 2004, the applicant returned to Ireland in order to attend the immigrant visa interview.

On September 21, 2004, the applicant filed the Form I-601 along with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship if the applicant were denied a waiver and submitted additional evidence in support of the applicant's claim his spouse would suffer extreme hardship. *Applicant's Brief,* dated March 17, 2005. In support of these assertions, counsel submitted the above-referenced brief, an additional affidavit from [redacted], medical documentation in regard to Ms. [redacted] and letters of recommendation. The entire record was reviewed and considered in rendering a decision in this case.

On appeal, the applicant requests oral argument. The regulation at 8 C.F.R. § 103.3(b) provides that the affected party must explain in writing why oral argument is necessary. Citizenship and Immigration Services (CIS) has the sole authority to grant or deny a request for oral argument and will grant such argument only in cases that involve unique factors or issues of law that cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Consequently, the request is denied.

Before the AAO can determine whether the applicant is eligible for a waiver pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), it must first determine whether the applicant is eligible to apply for the relief requested. As noted previously, the applicant accrued more than one year of unlawful presence in the United States between May 27, 1997 and December 1998. The applicant attempted to reenter the United States and was refused preflight clearance. The applicant then reentered the United

States without a lawful admission or parole and without permission to reapply for admission in 2000. The applicant last departed the United States in July 2004 and has remained outside the United States since that time.

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

> (C) Aliens unlawfully present after previous immigration violations.-
>
> (i) In general.-Any alien who-
>
> (I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or
>
> (II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,
>
> and who enters or attempts to reenter the United States without being admitted is inadmissible.
>
> (ii) Exception.- Clause (i) shall not apply to an alien seeking admission more than 10 years after the date of the alien's last departure from the United States if, prior to the alien's reembarkation at a place outside the United States or attempt to be readmitted from a foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission. The Secretary, in the Secretary's discretion, may waive the provisions of section 212(a)(9)(C)(i) in the case of an alien to whom the Secretary has granted classification under clause (iii), (iv), or (v) of section 204(a)(1)(A), or classification under clause (ii), (iii), or (iv) of section 204(a)(1)(B), in any case in which there is a connection between—
>
> (1) the alien's having been battered or subjected to extreme cruelty; and
>
> (2) the alien's--
>
> (A) removal;
>
> (B) departure from the United States;
>
> (C) reentry or reentries into the United States; or
>
> (D) attempted reentry into the United States.

The AAO, therefore, finds that the applicant is inadmissible pursuant to section 212(a)(9)(C)(i)(I) of the Act. The AAO notes that an exception to the section 212(a)(9)(C)(i) ground of inadmissibility is available to individuals classified as battered spouses under the cited sections of section 204 of the Act. *See also* 8 U.S.C. § 1154. There are no indications in the record that the applicant is or should be classified as such.

An alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not apply for consent to reapply unless more than 10 years have elapsed since the date of the alien's last departure from the United States. *See Matter of Torres-Garcia,* 23 I&N Dec. 866 (BIA 2006). Thus, to avoid inadmissibility under section 212(a)(9)(C) of the Act, it must be the case that the applicant's last departure was at least ten years ago *and* that CIS has consented to the applicant's reapplying for admission. In the present matter, the applicant's last departure from the United States occurred in July 2004, less than ten years ago. He is currently statutorily ineligible to apply for permission to reapply for admission.

Inasmuch as the applicant is inadmissible and there is no waiver available for inadmissibility under section 212(a)(9)(C)(i)(I), until 10 years after his last departure, no purpose would be served in discussing whether the alien is eligible for a waiver of the 212(a)(9)(B)(i)(II) inadmissibility grounds pursuant to section 212(a)(9)(B) of the Act. Accordingly, the appeal is dismissed.

ORDER: The appeal is dismissed.