U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: LONDON Date: SEP 0 1 2009

IN RE: [redacted]

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

Michael Shumway

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, London. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [redacted] is a native and citizen of Ireland. He was found by the Field Office Director to be inadmissible to the United States pursuant to sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(a)(9)(B)(i)(II) and 1182(a)(6)(C)(i). The applicant was found inadmissible under section 212(a)(9)(B)(i)(II) for having been unlawfully present in the United States for more than one year and seeking admission within 10 years of his last departure from the United States. He was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for seeking to procure admission into the United States by fraud. The applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), in order to return to the United States to join his United States citizen spouse, [redacted].

The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, his United States citizen spouse, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly.

On appeal, counsel asserts that the applicant has demonstrated that his spouse will actually and prospectively suffer extreme hardship if he is denied an immigrant visa for admission to the United States. As corroborating evidence, counsel submitted declarations from the applicant and his spouse, letters from the applicant's spouse's psychologist, a letter from [redacted] of the Irish Immigration Pastoral Center, letters from the Hamilton Family Center, a letter from Associate [redacted] of the First Baptist Church, the applicant's father-in-law's death certificate and claim to the Department of Veterans Affairs for death benefits, the applicant's spouse's college diploma and California Basic Educational Skills Test results, and photographs of the applicant and his spouse. Counsel also furnished documentation related to the applicant's spouse's residence in Ireland, including an offer of employment, earnings statements, Social Services Card and Ireland Certificate of Registration. The entire record was reviewed and considered in rendering the decision on the appeal.

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

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
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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.
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> . . . .

> (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 [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.

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

> (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:

> (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 the applicant, a citizen of Ireland, entered the United States under the terms of the Visa Waiver Program (VWP) on June 5, 1998, and thereafter resided permanently in the United States. The applicant again entered the United States on January 20, 2000 under the VWP, although there is no departure record associated with this entry. On July 9, 2001, the applicant filed an Application for Adjustment of Status (Form I-485). While the adjustment of status application was pending, the applicant was paroled into the United States with his advance parole travel document on July 22, 2001, January 13, 2004 and March 29, 2004. The adjustment of status application was denied on May 8, 2004. On December 28, 2005, the applicant departed the United States and traveled to Ireland. The director correctly found that the applicant accrued over one year of unlawful presence during his period of residence in the United States. The applicant is attempting to seek admission into the United States within 10 years of his departure from the United States. The applicant has not disputed on appeal that he was unlawfully present in the United States as noted. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act.

The record reflects that on January 23, 2006, the applicant attempted to enter the United States at the San Francisco International Airport as a temporary nonimmigrant visitor for 90 days or less under the terms of the VWP. As stated, the record reflects that the applicant had previously overstayed his admission as a nonimmigrant visitor and resided in the United States from June 5, 1998 until December 28, 2005. In applying for admission under the VWP, the applicant misrepresented himself as intending to reside in the United States as a temporary nonimmigrant visitor while, in fact, he had established residence in the United States. The applicant has not disputed the materiality of his misrepresentation on appeal. The AAO, therefore, finds that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for willfully misrepresenting material facts to procure admission to the United States.

Section 212(a)(9)(B)(v) and 212(i) of the Act waivers of the bar to admission, resulting from the respective violations of sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act, are 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 himself experiences upon refusal of admission is irrelevant to section 212(a)(9)(B)(v) and 212(i) waiver proceedings. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA 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 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 BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

Counsel asserts that the applicant's spouse has a history of depression and anxiety, which were aggravated by her failed attempt to relocate with her husband to Ireland. Counsel states that if the

applicant's spouse relocated again to Ireland, she would suffer extreme hardship due to her interest in the welfare of the family she would abandon in the United States. Counsel states that the applicant's spouse has demonstrated substantial ties to her family and presented evidence that the growing financial and emotional interdependence with her mother and younger sister is important to her own well-being. Counsel states that the applicant's spouse is deeply involved in her Baptist Church and the broader community, and has made significant gains toward establishing a professional teaching career. Counsel notes that the applicant's spouse's teaching credential will have no value in Ireland.

In support of the waiver application, counsel furnished a declaration from the applicant's spouse, dated November 9, 2006. The applicant's spouse states in her declaration that in 2003 she received counseling and medication from [redacted], a psychologist, because she was suffering a major depressive disorder, due to an incident that occurred in college. She states that over time she was taken off the medication and able to resume her normal life. She states that she is the second of four children who reside in the United States. She states that she has a 14 year old sister who lives with her mother. She states that her father passed away the prior year from lung cancer. She states that after her father passed away, her mother had to find work, and is now employed as a typist clerk. She states that her mother relies on her for support and help with her sister. She states that in March 2006 she went to Ireland and was able to remain there only for a few months. She states that she had no family and friends there and she was feeling depressed and anxious because of her separation from her mother and sister. She states that she has been living with her mother and sister since her return.

As corroborating evidence, counsel furnished two letters from [redacted], respectively dated October 3, 2006 and June 1, 2007. [redacted] states in her initial letter that the applicant's spouse reinitiated psychotherapy on September 22, 2006 because she was concerned that she may have another depressive episode. She states that the applicant's spouse's separation from the applicant is causing her considerable distress, which could result in a relapse into depression. [redacted] states in her second letter that in her opinion, the applicant's spouse's depression would be worsened by a move to Ireland. She states that the applicant's spouse has already attempted to live in Ireland with her husband, and found that living there exacerbated her depressive symptoms so dramatically that a geographic separation from her husband was less depressing to her. She states that a move to Ireland would cause the applicant's spouse significant psychological hardship and would be a hazardous plan for her mental health.

The AAO has reviewed letters and finds that they fail to establish that the applicant is suffering from a mental health condition that would contribute to a finding of extreme hardship if she moved to Ireland. The AAO finds that [redacted] letters are vague and fail to provide a thorough analysis of the applicant's condition. [redacted] stated in her initial letter, filed with the waiver application, that the applicant's spouse could relapse into depression, indicating that the applicant's spouse was not depressed. [redacted] then stated in her second letter, filed on appeal, that the applicant's spouse's move to Ireland could worsen her depression, indicating that the applicant's spouse was depressed. [redacted] second letter fails to indicate whether she has now diagnosed the applicant's spouse with another episode of major depressive disorder. The record

does not contain a psychiatric evaluation of the applicant's spouse or other medical documentation related to [redacted] diagnosis and treatment of the applicant's condition. As such, the documentation contained in the record is insufficient to demonstrate that the applicant's spouse is suffering from a medical condition that would contribute to a finding of extreme hardship if she accompanied the applicant to Ireland.

The applicant's spouse asserts in her declaration that she is providing her mother with support and help raising her younger sister. She states that if she moved to Ireland she fears she would not be able to find work that would allow her to financially assist her mother and sister. Although hardship to the applicant's mother-in-law is not at issue in these proceedings, it will be considered insofar as it results in hardship to the applicant's spouse. The AAO notes first that the record fails to demonstrate the extent of this financial assistance. Second, the applicant's spouse has indicated that she is second of four children who reside in the United States and she has a large extended family that she is close to and visits often. The record fails to indicate where the applicant's spouse's other family members reside and whether they can provide support and assistance to her mother and sister. Finally, counsel's assertion that the applicant's spouse's ties to the United States consist of her deep involvement with her Baptist church is not demonstrated by the record. The record contains a letter from [redacted] First Baptist Church, Lodi, which only discusses his prior association with applicant's spouse as her youth pastor. Further, there is no indication that the applicant's spouse would not be able to become involved with a Baptist church in Ireland. The AAO acknowledges that if the applicant's spouse moved to Ireland, she would suffer emotional hardship as a result of her separation from her family and community in the United States. However, her situation is typical of individuals separated as a result of removal or inadmissibility, and does not, alone, rise to the level of extreme hardship.

The applicant's spouse asserts in her declaration that she has been taking exams towards becoming a high school teacher in California. She states that she recently passed the CBEST exam which allows her to begin substitute teaching in California. She states that her degree in Criminal Justice and the exams she took will not translate to the Irish qualifications for teachers and she would be forced to start again. She states that it would be emotionally devastating to abandon the career she aspired to and work hard to build. The AAO notes that none of the applicant's spouse's claims are supported by corroborating documentation, rendering her assertions speculative. There is no documentation in the record regarding the qualifications for foreign teachers in Ireland. The applicant's spouse has not discussed whether she has researched the qualifications for teachers in Ireland. Nor has she discussed whether she searched for employment opportunities in the education field when she resided 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 Soffici, 22 I&N Dec. 158, 165 (Comm. 1998) (citing Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972)). Moreover, the applicant's assertion that she would have to start again towards achieving her teaching qualifications does not necessarily rise to the level of extreme hardship. In *Shooshtary v. INS,* the Ninth Circuit Court of Appeals noted that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy." 39 F.3d 1049, 1051 (9th Cir. 1994). Therefore, although the applicant's spouse's

unsupported assertions are relevant and have been considered, they can be afforded little weight in these proceedings.

Finally, the applicant's spouse asserts in her declaration that it would be devastating for her if the applicant remained in Ireland due to his inadmissibility. As previously noted, counsel furnished a letter from [redacted] dated October 3, 2006, which states that the applicant's spouse's separation from the applicant is causing her considerable distress, which could result in a relapse into depression. The letter states that the applicant's spouse is engaged in psychotherapy to help mitigate the severity of any such episode. As discussed, the record fails to indicate whether [redacted] has diagnosed the applicant's spouse with another episode of major depressive disorder. The record does not contain a psychiatric evaluation of the applicant's spouse or other medical documentation related to the diagnosis and treatment of the applicant's condition.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if she remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant and his spouse, and as demonstrated by the evidence in the record, is the common result of removal or inadmissibility and does not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). 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.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act. 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 sections 212(a)(9)(B)(v) and 212(i) of the Act, the burden of establishing that the application merits approval 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.