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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H6

[redacted]

DATE: OCT 05 2011 Office: LONDON, ENGLAND File: [redacted]

IN RE: Applicant: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, London, England. 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. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure. He was also found to be inadmissible pursuant to 212(a)(6)(C)(i) for seeking to procure admission to the U.S. by fraud or willful misrepresentation of a material fact. He is married to a United States citizen. 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).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on May 13, 2009.

On appeal, counsel for the applicant asserts that the Field Office Director failed to abide by applicable precedent and that the Field Office Director's conclusions that the applicant was additionally inadmissible under section 212(a)(6)(C)(i) and had failed to establish extreme hardship were incorrect. *Form I-290B*, received on June 9, 2009.

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-
>
> . . . .
>
> (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.
>
> . . . .

The record indicates that the applicant entered the United States under the Visa Waiver Program in 1999 and remained until he departed voluntarily in October 2004. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The Field Office Director additionally concluded that the applicant was inadmissible under section 212(a)(6)(C)(i) for having misrepresented a material fact when he entered the United States in 1999.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (i) In general. 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 chapter is inadmissible.

The Field Office Director based his finding of inadmissibility under section 212(a)(6)(C)(i) on the fact that the applicant began working in the U.S. shortly after entering under the Visa Waiver Program. The director concluded that the applicant's intention upon entry into the U.S. was to live and work and, therefore, that the applicant had falsified information on his Nonimmigrant Visa Waiver Arrival/Departure (Form I-94W) in order to gain entry into the United States.

The AAO does not find there to be sufficient evidence to establish that the applicant is inadmissible for fraud or misrepresentation under section 212(a)(6)(C) of the Act. Although the applicant sought employment following his admission to the United States and remained beyond his authorized period of stay, these facts alone are not sufficient to establish that he misrepresented his intent upon entering the United States in 1999. There is no further indication in the record that the applicant made willfully misrepresented a material fact in connection with his 1999 entry. As such, the AAO does not find the applicant to be inadmissible pursuant to 212(a)(6)(C)(i).

The record includes, but is not limited to: prior briefs from counsel for the applicant; a statement from the applicant's spouse; a statement from the applicant; a statement from family members of the applicant's spouse; medical records pertaining to the applicant's spouse's mother, father and brother; tax and other financial records for the applicant's spouse; a statement from [redacted] an employment letter for the applicant's spouse' and photographs of the applicant, his spouse, his spouse's parents, brothers and grandmother.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

> The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying

relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to

speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel asserts that the applicant's spouse would experience emotional, financial and acculturation impacts upon relocation to Ireland. *Statement in Support of Appeal*, received August 18, 2008. Counsel states that relocation to Ireland would result in separation of the applicant's spouse from her mother, father and brothers, all of whom have medical issues. He asserts that she has no family ties in Ireland, is unfamiliar with the culture there, would not be able to find employment and would not have access to an educational system allowing her to further her career. He also asserts that the applicant's spouse would have to take a loss on the sale of her personal residence.

The applicant's spouse has submitted a statement outlining the claims discussed by counsel. *Statement of the Applicant's Spouse*, dated May 20, 2008. In her statement the applicant's spouse explains that she has lived all her life in the United States, would experience anxiety at having to adapt to Irish culture and would depend completely on the applicant for support.

The record contains extensive documentation on the medical conditions of the applicant's spouse's family. These records detail the cardiovascular, orthopedic and other medical issues of her father, the orthopedic issues of her mother, as well as the kidney condition of one of her brothers and the injuries suffered by her other brother in a car accident. The record also includes statements from her family attesting to their emotional bonds and the difficulty that would arise if the applicant's spouse relocated to Ireland.

The AAO acknowledges that the applicant's immediate family members have numerous medical issues. However, it would note that, despite the extensive evidence submitted, there is nothing which indicates that the applicant's spouse's family is dependent on her or the applicant financially or physically. The medical records, although confirming that they have medical conditions, do not indicate that they are incapable of providing for themselves, incapable of functioning on a daily basis, or that they are physically dependent on any other person, specifically the applicant's spouse, for their medical or other needs. When these observations are considered in their totality, the AAO can accept that the applicant's spouse would experience some hardship in separating from her immediate family due to their conditions, but does not find this hardship to rise above the common impacts of separation.

With regard to the applicant's spouse's anxieties over residing in Ireland, the record does not contain evidence which justifies the applicant's spouse's assertions. While the AAO accepts that the

applicant's spouse may not have any immediate family in Ireland, and may face some difficulty in adjusting to life there, it notes that there is no evidence that she would be incapable of finding employment, furthering her education or otherwise adjusting to the social environment there.

As noted above, counsel asserts that if the applicant's spouse were to relocate abroad she would lose her investment in her personal residence. The applicant's spouse states that there is a stipulation that does not allow her to sell or rent her condominium and that, in any event, she would not be able to sell her condominium due to the poor housing market. However, the record does not contain any evidence that the applicant's spouse owns a condominium, or that she would be unable to sell this property if she were to relocate.

Counsel asserts on appeal that the Field Office Director failed to follow applicable precedent, namely *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The AAO would note that the decision in *Matter of Cervantes-Gonzalez* provides guidance on how to interpret what may be considered extreme hardship. Each application is decided based on the facts of that case. An applicant must articulate a basis of extreme hardship and support any assertions with relevant, probative evidence. In this case the applicant has failed to establish extreme hardship to a qualifying relative, and merely citing to *Cervantes-Gonzalez* is not sufficient to carry the applicant's burden.

Even when the impacts asserted are considered in aggregate, there is insufficient evidence to establish that they rise above the common impacts associated with relocation abroad with an inadmissible family member.

Counsel for the applicant asserts that the applicant would experience emotional and financial hardship if the applicant is not admitted to the United States. *Statement in Support of Appeal*, received August 18, 2008.

The applicant's spouse has submitted a statement asserting she will experience emotional and financial hardship if the applicant is not admitted to the United States. *Statement of the Applicant's Spouse*, May 20, 2008. The applicant's spouse asserts that she has to work two jobs to support herself and that she will be unable to return to school in order to earn a master's degree without the applicant present in the United States to provide additional income. The applicant's spouse also asserts that she fears that further separation will complicate their efforts to conceive as she is now 34 and feels that she will not be able to have children for much longer.

The record contains financial records for the applicant's spouse, as well as an employment verification letter and other tax records. There is no documentation indicating the applicant's spouse is unable to meet her financial obligations. There is no evidence that the applicant's spouse provided any financial support to the applicant's spouse or family while he was resident in the United States. There is no evidence that the applicant would be unable to provide financial support for his spouse from abroad if he chose to do so. There is no evidence that the applicant's spouse's immediate family members are incapable of providing support to help the applicant's spouse to mitigate the impacts of the applicant's absence.

The applicant's spouse also states that she wishes to get a master's degree in teaching. On appeal, she states that she does not have the resources to attend online classes. She has submitted a printout with information on the University of Bridgeport's Internship Program which provides a "tuition free degree/certification experience." The record does not establish that the applicant's spouse is unable to afford online courses, or that she would be unable to attend the University of Bridgeport's Internship Program. However, even assuming that the applicant's spouse is currently unable to enroll in a master's degree program, the AAO does not find this to be an uncommon hardship.

Although the applicant's spouse has asserted that she will be unable to continue her education or have children without the applicant present in the United States, the AAO notes that these are not considered uncommon hardship impacts. Even when the hardship impacts asserted in this case are considered in aggregate they do not rise above the common impacts of separation, and as such fail to establish extreme hardship to the applicants' spouse.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's husband will have to make adjustments with his regard to his meal preparation, as would any qualifying relative in a similar situation. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) 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 an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests 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.