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

[redacted]

H6

Date: DEC 0 6 2012 Office: ROME (LONDON) FILE: [redacted]

IN RE: Applicant: [redacted]

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

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Rome, Italy. 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 to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and that the applicant does not merit a favorable exercise of discretion. The district director denied the application accordingly.

On appeal, counsel submits additional evidence of hardship.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. Farrelly, indicating they were married on September 24, 2009; a letter from the applicant; statements from [redacted]; a letter from a social worker; a letter from [redacted] former wife; letters from [redacted] parents; a letter from [redacted] parents' physician; numerous letters from employers in Ireland; articles addressing high unemployment in Ireland; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)of the Act provides:

> (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 (whether or not pursuant to section 244(e) 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 this case, the record shows, and the applicant concedes, that she entered the United States in January 2005 under the Visa Waiver Program with authorization to remain in the United States for three months. The applicant remained beyond the period of her authorized stay and departed the United States in November 2008. The applicant accrued unlawful presence for three years. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of her last departure.

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.

In this case, the applicant's husband, [redacted], states that in 2006, he contracted HIV from a tattoo needle. He contends he was completely devastated and that meeting his wife gave him a new lease on life. [redacted] states his wife makes sure that he eats properly, exercises regularly, and takes his medications. He contends that he cannot cope without her and that his level of hardship would be much more extreme than other couples separated as a result of deportation or exclusion due to his HIV status. According to [redacted] he needs to visit his clinic on a regular basis to ensure his medications are working and his immune system is functioning properly. [redacted] states that he moved to Ireland in November 2008 to be with his wife, but that it has turned out to be a huge mistake. He states he has been unable to find work in Ireland. He also states that he has had to fly back to New York for his regular clinic appointments which is wearing him down and depleting the couple's finances. [redacted] contends he would like to move back to New York in order to be able to attend his clinic appointments and be closer to his children and parents.

After a careful review of the record, there is insufficient evidence to show that [redacted] has suffered or will suffer extreme hardship if his wife's waiver application were denied. If [redacted] decides to return to the United States without his wife, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Although the AAO is sympathetic to the couple's circumstances, the record does not show that the applicant's situation is unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). Although the AAO acknowledges [redacted] HIV status, there is nothing in the record specifically addressing how this chronic medical problem makes the hardship of being separated from his wife unusual or beyond that which would normally be expected after a spouse's separation. The letter from the medical clinic does not suggest [redacted] requires his wife's assistance in any way. Similarly, there is no letter from any counselor, therapist, or other mental health professional contending that [redacted] requires his wife's presence to assist him with his HIV infection. Without more detailed information, the AAO is not in the position to

reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that the hardship [redacted] will experience amounts to hardship that is extreme, unique, or atypical.

Furthermore, the record does not show that [redacted] would suffer extreme hardship if he remains in Ireland with his wife to avoid the hardship of separation. Although the record contains numerous letters from employers to whom [redacted] has applied for employment and who have declined to hire him, there is insufficient information in the record addressing the couple's overall financial situation. For instance, the record does not address whether the applicant is currently working and, if so, the amount of her income or wages. Similarly, [redacted] contends that flying back and forth between New York and Ireland for clinic appointments has been depleting their finances; however, he does not elaborate or describe the couple's savings or assets. According to [redacted] himself, beginning in January 2009, the couple was able to afford "traveling together around South America for six months" before moving into their current residence in Ireland. Regarding [redacted] contention that he needs to receive regular medical care in New York, neither the applicant nor her husband have addressed whether he can receive adequate monitoring and treatment in Ireland. Furthermore, [redacted] does not address whether he visited his daughter and his parents during his numerous trips back to the United States. Even considering all of the evidence cumulatively, there is insufficient evidence in the record to show that the applicant's husband's hardship would be extreme, or that their situation is unique or atypical compared to others in similar circumstances. *Perez v. INS, supra.*

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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.