

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY



U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529

U.S. Citizenship  
and Immigration  
Services



tl2

FILE:



Office: PHILADELPHIA, PA Date:

JUN 11 2009

IN RE:



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:



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, 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 Acting District Director, Philadelphia, Pennsylvania. 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)(6)(C)(i) of the Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States by fraud or willful misrepresentation. He is married to a U.S. citizen. He seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The Acting District 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 Ground of Excludability (Form I-601) on July 28, 2006.

On appeal, counsel for the applicant contends that the Acting District Director failed to consider all the relevant factors in reaching her decision and that, when considered in the aggregate, these factors establish that the applicant's spouse would suffer extreme hardship.

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 AAO notes that the Supreme Court in *Kungys v. United States*, 485 U.S. 759 (1988) found that the test of whether concealments or misrepresentations were "material" was whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, the legacy Immigration and Naturalization Service's (United States Citizenship and Immigration Services) decisions. In addition, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements of a material misrepresentation are as follows:

A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:

- a. the alien is excludable on the true facts, or
- b. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

The record indicates that the applicant entered the United States on May 28, 2000, under the Visa Waiver Program (VWP) using a British passport and subsequently overstayed his authorized 90-day period of admission, departing the United States in October 2000. He reapplied for admission under the VWP on March 7, 2002, using an Irish passport. At the time of his adjustment interview on

January 3, 2006, the applicant signed a sworn statement indicating that he had obtained an Irish passport because he had overstayed on his previous visit to the United States under the VWP.

The applicant asserts that the statement he signed at the time of his adjustment interview is not true and that a U.S. Citizenship and Immigration Services (USCIS) officer coerced him into signing it. While the AAO notes the applicant's claim, his assertions do not overcome the sworn statement he wrote and signed at the time of his adjustment interview. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in 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)). By using a different passport at the time of his March 7, 2002 entry, the applicant shut off a line of inquiry that was relevant to his eligibility for admission under the VWP and which could well have resulted in his exclusion. Therefore, the record establishes that the applicant entered the United States as a result of a material misrepresentation, and is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The AAO also notes that, in an affidavit dated January 14, 2006, the applicant attests that he was intending to live in the United States at the time of his March 7, 2002 entry to the United States under the VWP. Therefore, the applicant at the time of his March 7, 2002 admission was also excludable on the true facts as he was an intending immigrant applying for admission as a nonimmigrant. For this reason as well, the AAO finds the applicant to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section in the case of an immigrant 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 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 . . . .

A waiver of inadmissibility under section 212(i) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant is not directly relevant to a determination of extreme hardship under the statute and will be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. Sections 212(a)(9)(B)(v) and 212(i) of the Act; *see also Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of

each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

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).

The AAO notes that extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States, as a qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request.

The record of proceeding contains, but is not limited to, briefs from counsel, statements from the applicant, a statement from the applicant's spouse, utility invoices and bank records, tax returns for the applicant's spouse, statements from family and friends, and copies of the applicant's birth and marriage certificates.

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

Counsel for the applicant has asserted that both the applicant and her spouse have family ties in the United States and that the applicant's spouse would suffer financial hardship if the applicant is removed from the United States because he is the principal provider for their household. The applicant's spouse states that the applicant is her life and that he keeps them "financially alive," earning \$500 to \$1,000 per week. She contends that if the applicant were removed from the United States she would be unable to pay their bills on her \$11,000 per year salary and provides a listing of their monthly expenses totaling \$2,776. The applicant's spouse also states that her father has been diagnosed with severe hypertension and emphysema, and her mother has breast cancer, as well as severe hypertension and poor circulation. The burden for their care, she asserts, falls on her as she is the only one of her siblings who is available. The applicant's spouse indicates that the applicant helps her care for her mother and serves as her emotional support. The applicant's spouse also reports that, in 1994 and 1995, she had surgery for cysts in her breasts and that she is fearful that she will develop breast cancer in the future and would be unable to cope with cancer and the loss of the applicant. The applicant contends that his spouse's mental health would suffer if he is removed from

the United States and that she is already experiencing severe distress at the prospect of their separation.

While the AAO notes the claims made by the applicant and his spouse, it finds them to be insufficient proof that the applicant's spouse would suffer extreme hardship if she and the applicant were separated as a result of his inadmissibility. The record does not contain documentation that supports the applicant's spouse's listing of her monthly financial obligations. Neither does it establish the level of income she claims is earned by the applicant. The record is similarly silent when it comes to the applicant's spouse's mental health and does not support the applicant's claims that she is currently experiencing severe emotional distress or that her mental health would be compromised by his removal. Neither is there any documentary evidence that establishes that the applicant's spouse's fear of developing breast cancer would result in extreme emotional hardship to her in the applicant's absence. 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)).

With regard to the applicant's spouse's parents, it is noted that the impact on non-qualifying relatives is not directly relevant to a determination of extreme hardship in these proceedings, except as they relate to the qualifying relative. Moreover, the record does not contain any evidence, beyond the assertions of the applicant's spouse, that her parents have significant medical conditions or that they require her assistance. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.* Further, the record does not establish how the applicant's spouse would be affected if she had to care for her parents in the applicant's absence.

Therefore, the record does not establish that the applicant's spouse will suffer extreme hardship if the applicant is excluded and she remains in the United States.

Extreme hardship to a qualifying relative must also be established if he or she were to relocate with the applicant. The applicant states that he could never ask his spouse to move to Ireland as her life is here in the United States and she needs to remain in the United States as a result of her parents' medical problems. He also asserts that his spouse has never traveled outside the United States and would not do well in Northern Ireland as jobs are scarce and she would be saddened by the separation from her family. While the AAO acknowledges the applicant's claims, the record, as previously discussed, does not establish the medical conditions of the applicant's spouse's parents or that she provides their care. Without evidence to establish that the applicant's spouse's parents have daily health care needs and that she is the only one able to help them, the applicant's assertions are not persuasive. The record also lacks any documentation regarding the economy of Northern Ireland that would support the applicant's claim that his spouse would find it difficult to obtain employment if she relocated or proof, e.g., an evaluation of the applicant's spouse performed by a licensed health care professional, that the sadness she would feel if separated from her family would be greater than that commonly associated with relocation. Accordingly, the record lacks sufficient evidence to demonstrate that relocation would result in extreme hardship for the applicant's spouse.

Thus, the record, when viewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's spouse will suffer hardship as a result of the applicant's inadmissibility. However, the record fails to distinguish the hardship she would experience from that suffered by other individuals whose spouses have been found to be inadmissible to the United States. 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(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) or 212(i) 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.