

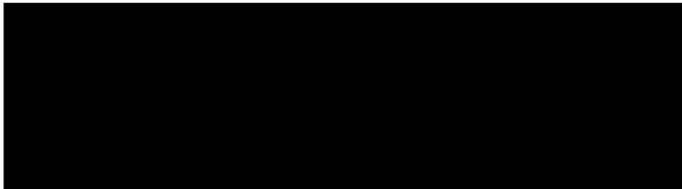


U.S. Citizenship
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FILE:

Office: LONDON, ENGLAND

Date: **MAR 30 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), Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h), and Section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Officer in Charge, London, England, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Ireland and a citizen of both Ireland and the United Kingdom, who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation on October 19, 2004. The applicant was also found inadmissible 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 more than one year and seeking readmission within ten years of his last departure from the United States. Finally, the applicant was found inadmissible under section 212(a)(2)(D)(ii) of the Act, 8 U.S.C. § 1182(a)(2)(D)(ii), for engaging in prostitution. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), section 212(h) of the Act, 8 U.S.C. § 1182(h), and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II).

The officer in charge found the applicant inadmissible under sections 212(a)(6)(C)(i), 212(a)(9)(B)(i)(II), and 212(a)(2)(D)(ii) of the Act. The officer in charge found that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility, but that due to the applicant's record a favorable exercise of discretion was not warranted. The application was denied accordingly. *Decision of the Officer in Charge*, dated September 14, 2006.

On appeal, the applicant apologizes for his mistakes and states that he and his spouse are suffering hardship as a result of being separated. *Letter from Applicant*, dated October 3, 2006.

The record indicates that on November 4, 1992 the applicant entered the United States under the terms of the visa waiver program. The applicant remained in the United States until 1995, when he visited Mexico. The applicant states that when he attempted to re-enter the United States at the San Ysidro Port of Entry he was refused. On February 8, 1995, U.S. Border Patrol witnessed the applicant enter the United States without inspection and apprehended him. The applicant was placed into removal proceedings, but failed to respond to these proceedings and remained in the United States unlawfully until December 23, 2003. During this period of unauthorized stay the applicant was arrested and convicted on June 22, 1998 for solicitation of prostitution in Santa Ana, California.

Sixteen days after his departure from the United States on December 23, 2003, the applicant re-entered the United States on January 8, 2004, again under the terms of the visa waiver program. On October 19, 2004 at the San Clemente Interstate Five Checkpoint, the U.S. Border Patrol encountered the applicant. The applicant then stated that he was a lawful permanent resident and had left his permanent resident card at his house. Further checks revealed that the applicant had previously entered the United States with a different name and date of birth. The applicant was granted voluntary departure until October 24, 2004 and departed the United States in compliance with this order.

The applicant then reentered the United States on November 12, 2004 under the visa waiver program and departed on January 21, 2005. The applicant again applied for entry to the United States on

April 14, 2005 at the U.S. Customs and Border Protection Pre-Clearance Facility in Dublin, Ireland and was refused entry because of his prior immigration violations.

The AAO finds the applicant inadmissible under section 212(a)(6)(C) of the Act for attempting to procure entry into the United States on October 19, 2004 by misrepresenting his immigration status as that of a lawful permanent resident.

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

- (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 that:

- (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 AAO also finds the applicant inadmissible under 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 10 years of his last departure from the United States. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until December 23, 2003, when he departed the United States. In applying for an immigrant visa, the applicant is seeking admission within ten years of his December 23, 2003 departure from the United States.

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

(B) Aliens Unlawfully Present.-

- (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.

(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.

The AAO does not find the applicant inadmissible under section 212(a)(2)(D)(ii) of the Act for engaging in prostitution. The record indicates that the applicant was convicted of a single act of soliciting prostitution. A single act of soliciting prostitution on one's own behalf does not fall within section 212(a)(2)(D)(ii) of the Act. *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549 (BIA 2008).

The AAO notes that the applicant is also inadmissible under section 212(a)(9)(C) of the Act as an alien who after being unlawfully present in the United States for more than one year, entered the United States without being admitted.

Section 212(a)(9) of the Act states 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.

Although, the applicant is inadmissible under section 212(a)(9)(C)(i) of the Act, this ground of inadmissibility is not overcome by an approval of an Application for Waiver of Ground of Inadmissibility (Form I-601), but requires an Application for Permission to Reapply for Admission (Form I-212) be submitted and approved. An alien who is inadmissible under section 212(a)(9)(C)(i) of the Act may not submit a Form I-212 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 the Service has granted the applicant permission to reapply for admission. In the present matter, the applicant's last departure from the United States occurred on October 24, 2004, less than ten years ago. He is currently statutorily ineligible to apply for permission to reapply for admission.

Nonetheless, the applicant is currently eligible to apply for a Form I-601 to waive the grounds of inadmissibility applicable to his case under sections 212(a)(9)(B) and 212(a)(6)(C) of the Act.

Section 212(a)(9)(B)(v) and section 212(i) waivers of the bars to admission resulting from section 212(a)(9)(B)(i)(II) and section 212(a)(6)(C) of the Act are dependent first upon a showing that the bars impose an extreme hardship to the U.S. citizen or lawfully resident spouse and/or parent of the applicant. Hardship the applicant experiences due to separation is not considered in section 212(a)(9)(B)(v) or section 212(i) waiver proceedings unless it causes hardship to the applicant's U.S. citizen or lawfully permanent resident spouse and/or parent.

The AAO notes that the officer in charge did not complete a full hardship analysis as required under sections 212(a)(9)(B)(v) and 212(i) of the Act when she found that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility because of the joint custody

agreement the applicant's spouse had regarding her then sixteen year old son. Extreme hardship to the applicant's spouse must be established in the event that she resides in Ireland *and* in the event that she resides in the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The officer in charge failed to make a determination as to whether the applicant's spouse would suffer extreme hardship as a result of staying in the United States with her son and being separated from the applicant.

The AAO conducts the final administrative review and enters the ultimate decision for U.S. Citizenship and Immigration Services on all immigration matters that fall within its jurisdiction. The AAO reviews each case *de novo* as to all questions of law, fact, discretion, or any other issue that may arise in an appeal that falls under its jurisdiction. Thus, the AAO finds that the applicant has not established that his spouse would suffer extreme hardship as a result of relocating to Ireland or as a result of residing in the United States and being separated from the applicant.

In regards to hardship the applicant states that his spouse should not have to choose between her son and him and that continued separation could cause severe hardship for them all. *Applicant's Statement*, dated October 3, 2006. The applicant also states that he and his spouse spoke about relocating to the United Kingdom, but they must put his spouse's son first. *Applicant's Statement*, dated March 30, 2006. The applicant also expressed concern over his spouse's career as a mechanical engineer and her attending the University of Phoenix and how relocation to the United Kingdom would affect these plans. *Id.* The applicant's spouse states that she and the applicant have maintained a seventeen-month long distance relationship and have been married for nine months. *Spouse's Statement*, dated March 29, 2006. She states that the distance has strained her emotionally and financially. The applicant's spouse states that her sixteen year old son lives with her ninety percent of the year and that she holds joint custody of him with her son's father, who lives in San Diego, California. She states that she has been working as a mechanical engineer for six and a half years and is accustomed to U.S. business practices. She states that she does not believe that her experience would transfer to European standards. The applicant's spouse states further that she is currently enrolled in an MBA program in Technology Management and has a tentative graduation date for the fall of 2007. The applicant's spouse states that if she had to move to the United Kingdom she would not be able to do so until late 2008, because then her son will be in college, she will have graduated with her MBA, and she will want to start a family with the applicant. *Id.* The applicant's spouse submitted a second statement, dated August 22, 2006, where she reiterates her inability to leave her son, her work experience in the United States and her inability to transfer that experience to Europe, and her educational goals. The record also contains a letter from the applicant's spouse's son's father, [REDACTED] Mr. [REDACTED] states that he has joint custody of his son with the applicant's spouse and that he would never allow him to relocate to the United Kingdom. *Letter from* dated August 15, 2006.

The AAO finds that the record does not support a finding that the applicant's spouse will suffer extreme hardship as a result of being separated from the applicant. Separation and the hardship that may result from separation was not addressed in the documentation submitted by the applicant, except for stating that it would cause severe hardship. No additional details or documentation were submitted in regards to the reasons why separation would cause hardship. In addition, the AAO finds

that the current record does not support a finding that the applicant's spouse would suffer hardship as a result of relocating to the United Kingdom. She states that once her son was in college and she finished her degree, moving to the United Kingdom would be a possibility. Moreover, the record does not supporting a finding that the applicant's experience as a mechanical engineer would not transfer to the European job market. The applicant submitted no documentation to support his assertions and 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)).

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 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 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.