

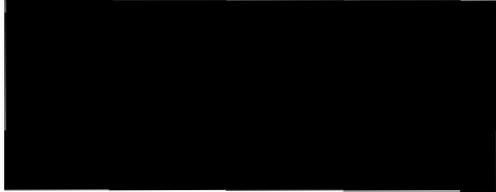
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FILE:



Office: LONDON

Date:

NOV 04 2009

IN RE:



APPLICATION:

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

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-In-Charge (OIC), London, England. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant, [REDACTED] is a native and citizen of Mexico, and a permanent resident of Ireland.¹ She was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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 admission within 10 years of her last departure from the United States. The applicant 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), in order to return to the United States to join her spouse, [REDACTED] a native and citizen of Ireland and a naturalized U.S. citizen.

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

On appeal, counsel asserts that when combining the economic hardship the applicant's spouse would face if he were forced to leave the United States because he would not be able to continue in his profession, the physical and psychological hardship he has endured based on his anxiety and panic disorder, and the extreme mental anguish and hardship associated with the fact that the applicant is unable to receive proper medical care, it is clear that the applicant's spouse will continue to experience extreme hardship due to the applicant's inadmissibility.

In support of the application, the record contains, but is not limited to, letters from the applicant and her spouse, medical documentation, country condition reports, photographs, and documentation related to the applicant's spouse's employment. The entire record was reviewed and considered in rendering this decision.

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.

¹ In the November 30, 2006 affidavit the applicant initially filed with her waiver application, the applicant indicated that she is a permanent resident of Ireland and is awaiting her Irish citizenship.

....

(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.

The record shows that the applicant entered the United States without inspection in 1995. The applicant remained in the United States until departing in October 2004. Time in unlawful presence begins to accrue on April 1, 1997, the date of enactment of unlawful presence provisions under the Act. The director found that the applicant accrued unlawful presence from April 1997 until October 2004. The applicant does not dispute this on appeal. The applicant is attempting to seek admission into the United States within ten years of her October 2004 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present in the United States for a period of more than one year and seeking admission to the United States within ten years of her last departure.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) 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).

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 (BIA) 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 United States 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).

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.

On appeal, counsel asserts that in March 2007, the applicant's spouse was diagnosed with panic disorder. Counsel states that evaluations by numerous physicians reveal that the sole cause of the applicant's spouse's physical and emotional illness is his separation from the applicant. Counsel states that the applicant's spouse is becoming dependent on his anti-anxiety medication and his symptoms have been progressively worsening since he was first diagnosed with a panic attack in March 2007.

As corroborating evidence, the applicant furnished the following letters from mental health professionals:

- A letter from [REDACTED], University Behavioral HealthCare at Newark, dated March 26, 2007, which, in part, states, "This letter is to acknowledge that [REDACTED] was a patient I was asked to evaluate for situational anxiety, who presented on Thursday, 3/22/07 to the ER at University Hospital, Newark, NJ. He endorsed recent symptoms of fatigue, insomnia, racing thoughts, palpitations, nightmares and preoccupation regarding his wife's pending immigration and feeling alone."
- A letter from [REDACTED], dated May 14, 2007, which, in part, states, "[REDACTED] symptoms occur frequently such that he now exhibits a Panic Disorder (DSM 300.01) characterized by recurrent unexpected Panic Attacks, which have occurred for over one month, with persistent concern about having additional attacks and worry that his health will be compromised or he will suffer a heart attack. Clinical examination in this office on May 11, 2005 further reveals a *Clinically Significant* presentation of Somatization and Anxiety and *At Risk* for Obsessive Compulsive features. . . . the onset of his Panic Disorder is directly related to the distress of his extreme hardship regarding his wife's immigration status" (emphasis in original).
- Letters from [REDACTED] dated March 28, 2007 and May 14, 2007, respectively. [REDACTED] March 28, 2007 letter states, "The above named has been under my care for anxiety and panic disorder. He has been prescribed medication. He is experiencing a lot of stress at work, long hours, a lot of traveling and possible the stress due to his wife's up coming pending immigration issue." [REDACTED] May 14, 2007 letter, in part, states, "The above named has been a patient in my office since 2003. He is normally a healthy well adjusted person. He came to me in March 2007 with chest pains and after many extensive tests; he was diagnosed with panic disorder. . . . I have placed [REDACTED] on Xanax."

- A patient prescription record from CVS Pharmacy issued for the period of January 1, 2007 to May 11, 2007. The record reflects that the applicant filled his prescription for Alprazolam on March 22, 2007, April 6, 2007 and May 11, 2007. According to the U.S. National Library of Medicine, Alprazolam is administered under the brand name Xanax, and is used to treat anxiety disorders and panic attacks.²

The AAO finds that the applicant's spouse currently experiences extreme hardship in the form of psychological distress primarily caused by separation from the applicant. The psychological suffering experienced by the applicant's spouse surpasses the hardship typically encountered in instances of separation as demonstrated by his diagnosis with Panic Disorder. The record reflects that the applicant's spouse is experiencing panic attacks, which have significantly disrupted his ability to function on a daily basis. Therefore it can be concluded that the applicant's spouse will continue to suffer extreme hardship if he remains separated from the applicant due to her inadmissibility.

As previously stated, extreme hardship to a qualifying relative must be established in the event that he or she remains in the United States or in the event that he or she accompanies the applicant abroad. Counsel asserts that the applicant's spouse gave up his steady, well-paying job in the United States and attempted to build a life with the applicant in Ireland. Counsel states that the applicant's spouse was unable to find a job that could sustain him and the applicant in Ireland, and he was forced to return to the United States and resume his previous position. The record contains an affidavit from the applicant's spouse which states that he went to Ireland and applied for at least eight jobs and interviewed for two positions, but received no viable offers. He states that the best offer he got required a 50 hour work week at minimal wage, and was 1 ½ hours away from where he was staying with his parents. He states that he would never be able to live a decent life in Ireland on such a salary. He states that because of his lack of formal education, the only opportunities available to him in Ireland were hard physical labor jobs. He states that because of his age and the easy availability of cheap immigrant labor in Ireland, employers found little use for his skills and abilities, and he was unable to even find a skilled laborer job.

The record contains a letter from the applicant's spouse's employer in the United States, [REDACTED], dated March 22, 2006. [REDACTED] states in his letter that the applicant's spouse is a full-time employee with a salaried position as a Plant Manger at the rate of \$2,000 per week. The AAO recognizes that the applicant's spouse may have a standard of living in Ireland that is lower than the standard he was accustomed to in the United States. However, a reduction in standard of living does not necessarily result in extreme hardship. Although the applicant's spouse claims he would only earn a minimum wage in Ireland, the record reflects that the applicant is currently employed as a nanny in Ireland. Thus, the applicant's salary would contribute to their overall household income. Therefore, the AAO finds that the economic detriment to the applicant's spouse as demonstrated in the record is typical of individuals who relocate as a result of removal or inadmissibility, and does not, alone, rise to the level of extreme hardship.

² <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a684001.html>

Counsel asserts that the applicant has a medical condition which could jeopardize their ability to have children. Counsel states that the applicant has been diagnosed with an ovarian tumor, which if not controlled or if it continues to grow, will necessitate the removal of one of her ovaries. Counsel states that the applicant lives with her spouse's parents in a remote village in rural Ireland. Counsel states that the applicant has minimal access to qualified specialists to treat her condition and protect her ability to bear children. Counsel states that such specialists require the financial ability to pay for the services. Counsel states that it is most likely that the applicant and his spouse will have to undergo intense fertility treatment in order to have children. Counsel states that in Ireland fertility care is not provided by the public health services and is not widely available. Counsel states that should the applicant's spouse return to Ireland, he fears that he will not be able to access the needed fertility treatment that will ensure his and his spouse's dream and desire to have children.

The record contains a letter from [REDACTED], Acapulco, Mexico, dated October 16, 2006. [REDACTED] reports his diagnostic findings of the applicant's ultrasound as, "Pelvic USG. - Normal Uterus. Cyst in right ovarius." The record also contains a letter from [REDACTED], dated October 12, 2006. [REDACTED] reports his conclusion of the applicant's sonogram as, "Data in Relationship to a Serous Cistusadenoma Versus Hemorrhagic Cyst With Probable Rupture." Finally, the record contains a letter from [REDACTED] Chilpancingo, Mexico, dated October 20, 2006. [REDACTED] letter, in part, provides, "diagnosis of a right anexial tumor with probable cistusadenoma serous versus ovary's quist plian. Both entities are of surgical resolution and is necessary surgical procedure specialized in a period of time of at least three months because of the risk of tumor growth"

Counsel furnished a report on "Serous Tumors-Ovary" from The Doctor's Doctor website, www.thedoctorsdoctor.com. The report states, "Serous tumors are very common tumors of the ovary, arising from the surface epithelium, comprising 20-50% of all ovarian tumors." The report further states that 70% of all tumors are serous cystadenoma and such tumors are benign (non-cancerous). Counsel furnished a second article from WSTM-TV's website, www.wstm.com. The report states, "Ovarian cysts are very common, particularly in women between the ages of 30 and 60. They may be single or multiple, and can occur in one or both ovaries. Most are benign (non-cancerous), but approximately 15 percent are malignant (cancerous)." Counsel highlighted the symptoms of cysts indicating that infertility occurs in polycystic ovaries and endometrial cysts. Counsel also highlighted the sections of the article which state that the treatment options are removal of cyst; removal of cyst and a portion of the ovary; removal of the cyst, ovary and fallopian tube; or removal of the cyst, both ovaries, fallopian tubes and uterus. The article notes that the last option is rarely used unless the cyst is cancerous.

The AAO has reviewed the medical documentation provided by the applicant and counsel and observes that the applicant's medical record states that she has a serous cystadenoma tumor, which according to the aforementioned articles, is very common and non-cancerous. There is nothing in the medical reports that would indicate she is suffering from polycystic ovaries or endometrial cysts, the conditions that are linked to infertility. Further, there is nothing in the medical reports that reflects she is suffering from infertility or that her condition could not be resolved with the removal of the

cyst. The AAO notes that the submitted medical records reflect that the applicant was diagnosed with an ovarian cyst in October 2006. In the affidavit the applicant initially filed with her waiver application, dated November 30, 2006, the applicant stated, "While trying to start a family we have been seeking medical advice with a Fertility Doctor in Ireland . . ." However, the applicant failed to provide, with her May 2007 appeal notice, any correspondence from her fertility doctor regarding the updated status of her condition and the treatment she is receiving. Moreover, the applicant's treatment by a fertility doctor in Ireland is in conflict with counsel's assertion that the applicant has minimal access to qualified specialists to treat her condition. For these reasons, the AAO cannot conclude that the applicant's medical condition would cause extreme hardship to her spouse if he relocated with her to Ireland.

Finally, counsel asserts that the applicant's spouse would experience hardship if he relocated to Mexico since he does not speak Spanish. The AAO recognizes that the applicant's spouse would face a language barrier in Mexico. However, an assessment of whether he would suffer extreme hardship in Mexico is unnecessary since the applicant has not established that her spouse would suffer extreme hardship in his native country of Ireland, which is also her country of permanent residence.

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 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.