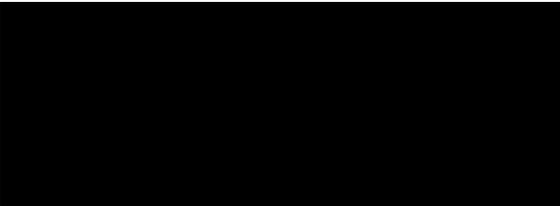




U.S. Citizenship
and Immigration
Services

Identifying data deleted to
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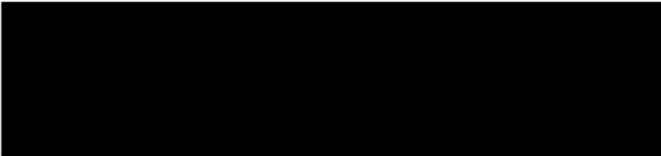
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FILE: [Redacted] Office: LONDON, ENGLAND Date: NOV 05 2009

IN RE: [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)

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, 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 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 Officer in Charge (OIC) 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 June 25, 2007.

On appeal, counsel for the applicant states that the OIC failed to “engage” the evidence, failed to properly weigh the positive factors for the applicant in exercising discretion to grant the applicant’s waiver and applied an insurmountable standard of proof that exceeds that of extreme hardship.

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.

(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 indicates that the applicant entered the United States under the Visa Waiver Program on September 11, 1996, with an authorized stay through November 11, 1996, but did not depart the United States until December 2000. The applicant again entered the United States under the Visa Waiver Program on January 15, 2001, with an authorized stay until April 15, 2001, but did not depart the United States until November 2005. On November 25, 2005, he again attempted to return

to the United States under the Visa Waiver Program but was refused admission. The applicant twice accrued unlawful presence in excess of one year and is now seeking admission within ten years of his last departure from the United States. Therefore, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Beyond the decision of the Officer in Charge, the AAO also finds the applicant to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured and having attempted to procure admission to the United States through fraud or willful misrepresentation.

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.

On January 15, 2001, the applicant returned to the United States under the Visa Waiver program, presenting himself at the port of entry as a nonimmigrant visitor, when, in fact, it was his intention to resume his unlawful residence in the United States. On November 25, 2005, the applicant again sought admission under the Visa Waiver Program to resume his U.S. residence, but was refused. The AAO finds that the applicant twice falsely represented himself as a nonimmigrant to gain admission to the United States and is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to procure an immigration benefit by fraud or the willful misrepresentation of a material fact.

A waiver of inadmissibility under sections 212(a)(9)(B)(v) and 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 the applicant is not directly relevant in section 212(a)(9)(B)(v) or section 212(i) proceedings and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *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 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 accompanies the applicant or 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.*

The record includes, but is not limited to, counsel’s brief; statements from the applicant’s spouse; a statement from the applicant; statements from family and friends of the applicant and his spouse attesting to the emotional and financial hardship of the applicant’s spouse; several Internet printouts of articles addressing the climate, business environment, social and health conditions in Ireland; the section on Ireland from the Department of State’s Country Reports on Human Rights Practices – 2006, copies of the applicant and his spouse’s birth certificate and marriage certificate; evaluations of the applicant’s spouse by [REDACTED] and [REDACTED] statements of employment for the applicant’s spouse; mortgage documentation; telephone, cable and utility bills addressed to the applicant’s spouse and her mother; medical documentation for the applicant’s spouse’s brother; and photographs of the applicant and his spouse .

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

Counsel asserts the applicant’s spouse has a history of depression, is currently suffering from Major Depressive Disorder, has an inseparable relationship with her mother, and is mentally dependent on her current environment and the presence of the applicant in the United States in order to function on a daily basis. She further states that the applicant and his spouse jointly own a residence and that, although she has a good job as a bartender, she must rely on her mother financially to support her during the applicant’s absence, which is preventing her mother from retiring.

Counsel recounts aspects of the applicant's spouse's childhood, history of depression and refers to the reports submitted by psychologist [REDACTED] and licensed clinical social worker [REDACTED] to establish that the applicant's spouse is suffering extreme emotional hardship in his absence. In her evaluation, [REDACTED] reports that the applicant's spouse has had a long history of depressive illness, beginning with a hospitalization for depression at the age of 13 years. [REDACTED] further notes that the applicant's spouse was again treated for depression three years later and also experienced depressive episodes approximately seven years ago when she left a job she had held for five years and three years ago when she was assaulted by a former boyfriend. She identifies the applicant's reports of a weight gain of 15 pounds, neglect of personal grooming, inability to sleep and anxiety as symptomatic of a new round of depression, which has been caused by her separation from the applicant. [REDACTED] concludes that the applicant's spouse is suffering from Major Depressive Disorder, Recurrent, Severe. She also finds that the applicant's spouse's depression would not be resolved by moving to Ireland as it has a strong seasonal component and would be worsened by a cloudy, rainy climate. [REDACTED] further concludes that in relocating the applicant's spouse would lose her current support system, her mother, which would trigger depressive symptoms. She further states that the applicant's spouse could not leave her mentally ill brother as she has been her brother's most frequent supporter.

Although the input of any mental health professional is respected and valuable, the conclusions reached by [REDACTED] in the present case are based on a single interview with the applicant's spouse and on the applicant's spouse's account of her personal history. Accordingly, the AAO does not find [REDACTED] conclusions to reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED] findings speculative and diminishing their value to a determination of extreme hardship. Moreover, the history of depressive illness on which [REDACTED] in part, bases her conclusion that the applicant's spouse suffers from Major Depressive Disorder, Recurrent, Severe is not documented in the record. Neither does [REDACTED] indicate that she has reviewed such medical documentation. While the AAO notes the potential difficulty of obtaining medical treatment records for depressive episodes that occurred during the applicant's spouse's teenage years, it observes that the record also lacks proof of the more recent depressive episodes described by [REDACTED], those that occurred following the applicant's spouse loss of employment approximately seven years ago and her former boyfriend's assault. [REDACTED] also fails to discuss or offer any basis for her finding that the applicant's spouse's depression has a seasonal component that would affect her ability to move to Ireland. The AAO further finds the record to offer no documentary evidence that the applicant's spouse serves as her brother's most frequent supporter, e.g., a statement from the social worker at the facility that houses the applicant's spouse's brother, and would, therefore, be unable to leave him to move to Ireland.

[REDACTED] evaluation indicates that it is based on two interviews of the applicant's spouse and concludes that the applicant's spouse is not coping well with separation from the applicant and is engaged in patterns of harmful behavior. Based on her interviews, [REDACTED] reports that the applicant's spouse is anxious and distracted, that she is under financial strain and is unable to afford her mortgage payments, transatlantic calls to the applicant, her travel to Ireland, helping the applicant meet his expenses in Ireland and her other bills. [REDACTED] states that the applicant's spouse is drinking heavily and using sleeping pills, and is on edge. She reports that the applicant's

spouse states that she is unwilling to move to Ireland because it is too expensive, employment there pays less than in the United States and that as Ireland is wet, dark and gloomy, it would be too depressing. [REDACTED] states that she is worried about how the applicant's spouse would cope with being separated from her mother, who is a primary source of support, and her mentally ill brother for whom she feels a strong sense of loyalty and responsibility. She finds the applicant's spouse to be highly dependent on others and that it is not clear the degree to which she has internal resources to cope with stress. In concluding her evaluation, [REDACTED] expresses considerable concern about the applicant's level of anxiety and the manner in which she is coping with that anxiety. She states that she sees the applicant's spouse anxiety worsening upon relocation. Although [REDACTED] indicates that she recommended continued therapy, the applicant's spouse responded that she did not have the time or the money to pursue such a course.

The AAO notes that [REDACTED] report on the applicant's spouse's emotional state does not offer a mental health diagnosis or specific conclusions regarding the applicant's spouse emotional status. She does not report that the applicant's spouse has a history of depressive illness or find the applicant's spouse to be suffering from Major Depressive Disorder. Instead, [REDACTED] addresses the applicant's spouse's accounts of her current behavior and expresses concern and/or doubt regarding the applicant's spouse's ability to cope with her separation from the applicant or to relocate to Ireland. While the AAO acknowledges [REDACTED] concerns regarding the applicant's spouse, it finds they fail to provide an objective basis on which to base a finding of extreme hardship.

Having reviewed the record before it, the AAO does not find the evaluations prepared by [REDACTED] and [REDACTED] to establish, individually or in the aggregate, that the applicant's spouse would suffer extreme emotional hardship if she remains in the United States. The AAO acknowledges that the applicant's spouse would experience emotional hardship in the event that the applicant's waiver application is not approved. However, for the reasons noted above, the record does not distinguish the applicant's spouse's emotional hardship from that experienced by other individuals separated from their spouses as a result of removal or exclusion.

The record also contains numerous statements from family and friends asserting that the applicant's spouse is suffering emotionally due to the applicant's exclusion, and noting that she has "let her appearance go" and is no longer the gregarious person that she once was. However, these statements, like the concerns expressed by [REDACTED] do not offer the objective evidence needed to establish extreme hardship.

Counsel claims that the applicant's spouse is working to exhaustion trying to meet her financial obligations in the applicant's absence. She reports that the applicant's spouse is responsible for her and the applicant's mortgage payments and other financial obligations, including paying for international telephone calls, travel to Ireland, legal fees for the applicant's immigration case and supporting the applicant in Ireland. Counsel also asserts that the applicant's spouse has a good job, which she has held for seven years. While the record includes statements from the applicant's spouse's employer, as well as tax documentation, it does not contain actual evidence of the applicant's spouse's income, e.g., a Form W-2 or a pay stub, or evidence of the applicant's income

while he resided in the United States. Neither is there any documentation in the record of the amount of money that the applicant's spouse is sending to the applicant in Ireland. The AAO also notes that the applicant's spouse has indicated that she is able to rely on her mother to assist her financially. It observes that the applicant's spouse told [REDACTED] during her interviews that her mother had paid for all of the legal expenses associated with the applicant's immigration case. Further, the record indicates that the applicant's mortgage, even after refinancing, continues to be held in the name of his mother-in-law and her husband, and that the telephone billing statements identified as one of the applicant's spouse's expenses relate to the mobile telephone number belonging to her mother. Accordingly, it is unclear whether the applicant's spouse is ultimately responsible for these particular financial obligations. Without evidence that specifically indicates the amount of income the applicant's spouse earns or her total monthly obligations and what part of these obligations are covered by her mother, the AAO cannot determine the extent of the financial burden on the applicant's spouse or conclude that it results in an extreme financial hardship on her. The AAO would also note that the fact the applicant's spouse's mother and stepfather are able to provide financial assistance mitigates any financial impact that she will experience based on the applicant's exclusion.

Extreme hardship to a qualifying relative must also be established if he or she relocates with the applicant. Counsel contends that the applicant's spouse has an inseparable relationship with her mother and is mentally dependent on her current environment and the presence of the applicant in the United States in order to function on a daily basis. She further states that the applicant's spouse's depression has a seasonal component that would be exacerbated by Ireland's climate and that she has a good job as a bartender and would not be comparably compensated if she relocated to Ireland.

Counsel has cited a range of periodical submissions on the social, economic and health conditions in Ireland, a developed, industrialized nation with nationalized healthcare system, in order to support the assertion that it would constitute an extreme hardship for the applicant's spouse to relocate with the applicant. The articles discuss crime rates, alcoholism, weather conditions, business climate and expectations within the European Union. The country conditions report published by the U.S. State Department also discusses social, economic and political conditions within Ireland. While the AAO acknowledges these submissions, the standard of proof for a waiver application is not that a qualifying relative would have to endure a lower standard of living, quality of life or have access to fewer job opportunities or amenities than they would if residing in the United States, but that a qualifying relative would experience an extreme hardship if they relocated to that country. *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978); *see also Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986)(concluding that hardship resulting from a lower standard of living, difficulties of readjustment and environment, reduced job opportunities, did not rise to the level of extreme hardship). Thus, only in cases of great disparity would such conditions establish an extreme hardship. Further, generalized discussions of the social, political or economic conditions on a national level are not sufficiently probative of the applicant's spouse's individual situation to establish that she would only receive the minimum wage or would not be able to find employment as a bartender in Ireland. Nor is an assertion of wealth disparity among classes evidence that an individual would experience extreme hardship simply by having to live in Ireland. *Id.* The periodical submissions fail to establish that it

would constitute an extreme hardship for the applicant's spouse to relocate to Ireland with the applicant.

With regard to the counsel's assertion that the applicant's spouse's depression has a seasonal component and that she has an inseparable relationship with her mother, the AAO notes that, as previously discussed, the psychological evaluations of the applicant's spouse performed by [REDACTED] and [REDACTED] fail to establish that her mental health would be affected by Ireland's weather or that she would suffer extreme hardship if she were separated from her mother.

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 would face extreme hardship if he is refused admission. While the applicant's spouse would suffer hardship as a result of the applicant's inadmissibility, the record does not distinguish her hardship from that commonly associated with removal and separation, and it, therefore, does 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 failed to establish extreme hardship to his U.S. citizen spouse as required under sections 212(a)(9)(B)(v) and 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 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.