



**U.S. Citizenship  
and Immigration  
Services**

(b)(6)

DATE: **APR 18 2013** Office: BOSTON

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

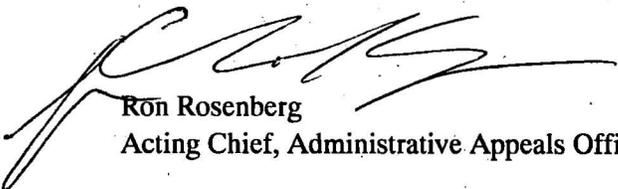
[REDACTED]

**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 with the field office or service center that originally decided your case by filing a 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 Field Office Director, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal.

The applicant is a native and citizen of Ireland who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having committed a controlled substance violation and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through misrepresentation. The applicant seeks waivers of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. §§ 1182(h),(i), in order to remain in the United States with his U.S. citizen spouse.

On October 12, 2010, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). The director determined that the applicant failed to establish extreme hardship to a qualifying relative, and denied the application accordingly.

On appeal, counsel asserts that the applicant has established extreme hardship to his spouse.

The AAO reviews these proceedings de novo. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003).

Section 212(a)(2) of the Act states in pertinent part:

- (A) Conviction of certain crimes. –
  - (i) In general. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of – . . . .
    - (II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

The [Secretary of Homeland Security] may, in [her] discretion, waive the application of . . . subparagraph (A)(i)(II) of . . . subsection [(a)(2)] insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if --

- (1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that --
  - (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

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(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .

The applicant submitted a conviction order, which reflects that on December 9, 1994 he was convicted in the District Court Area of Mullingar, Ireland of possession of cannabis resin in violation of section 3 and section 27 of the Misuse of Drugs Act of 1977. The applicant was ordered to pay a fine within 30 days of the conviction (case number 1859/1). The applicant is therefore inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(II) of the Act for having been convicted of a controlled substance violation.

A section 212(h) waiver applies to controlled substance cases that relate to a single offense of possession of 30 grams or less of marijuana. On November 28, 2012, the AAO issued a Request for Evidence (RFE) that the applicant's conviction was for possession of the equivalent of 30 grams or less of marijuana. The applicant, through counsel, timely responded to the RFE with additional evidence that establishes his eligibility for consideration for a waiver under section 212(h) of the Act.

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

(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:

(1) The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) 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 [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 . . . .

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The record shows that on September 30, 2002, the applicant completed a Form I-94W, Nonimmigrant Visa Waiver Arrival/Departure Form, for admission to the United States under the visa waiver program. On the back of the form, the applicant answered no to the question of whether he had ever been arrested or convicted for a violation related to a controlled substance, even though he had been convicted in Ireland for possession of cannabis resin. The applicant is therefore also inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through misrepresentation. The applicant does not contest his inadmissibility on appeal.

Because the applicant requires a waiver under section 212(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under subsection 212(h)(1)(B), we need not reach a decision on whether he is eligible for a waiver under subsection 212(h)(1)(A). Both subsections 212(h)(1)(B) and 212(i) of the Act require the applicant to establish that his inadmissibility would result in extreme hardship to a qualifying family member. The qualifying family in the instant case is the applicant's U.S. citizen spouse. 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).

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).

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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.

The AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

In support of the waiver application, the record includes, but is not limited to, the applicant’s conviction records, a letter from a psychologist, letters from the applicant’s wife’s employers, the applicant’s wife’s earnings statements, the applicant’s wife’s mobile telephone bill, a letter from the applicant’s landlord, an offer to purchase real estate signed by the applicant and his wife, a photograph of the applicant and his wife, and affidavits from the applicant, his wife, family members and friends. The entire record was reviewed and considered in rendering a decision on the appeal.

On appeal, counsel asserts that the applicant’s wife has secure employment in the United States as a paralegal and the applicant is self-employed in the construction business. Counsel contends that if separated, the couple would have to pay for travel expenses, separate homes and the cost of long-distance communications. The applicant’s spouse also asserted in her affidavit submitted below that if she and the applicant were separated, she could not afford to purchase a condominium on which they have already made a deposit. The record contains two employment verification letters for the applicant’s spouse. [REDACTED], General Manager, of [REDACTED] stated that the applicant’s spouse works one night a week as a bartender and earns \$150.00 per shift. [REDACTED], Manager of Human Resources & Training, of [REDACTED] stated that the applicant’s spouse is a legal compliance associate who is working 60 hours biweekly and is paid at

an hourly rate of \$18.00. The applicant's spouse provided her earnings statements as evidence of her salary. The record also contains: a letter from the couple's landlord stating that their monthly rent is \$1,200; a mobile telephone invoice for the applicant's spouse in the amount of \$572; and a copy of a contract, which reflects that the applicant and his spouse placed a \$20,000 deposit on a condominium in [REDACTED] on May 15, 2010. Although the applicant has provided evidence of some of his household expenses, the director correctly noted that the applicant had not provided any evidence of his construction business and earnings to establish his financial contribution to the household. Without evidence of the applicant's earnings, we are unable to determine the extent of financial hardship his spouse would suffer if they were separated.

Although, as counsel asserts, the couple would have to pay for travel expenses, separate homes and the cost of long-distance communications, these are common expenses of couples who are separated as a result of inadmissibility. Counsel indicates that the applicant would have difficulty establishing himself within the construction and plastering industry in Ireland because of the economic recession in the country. The director correctly noted that the applicant failed to submit any evidence establishing what employment opportunities, or lack thereof, exist in Ireland, and counsel submits no such evidence on appeal. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel references a letter from [REDACTED], a psychologist, and asserts that the applicant's wife has mood and anxiety disorders that would cause her emotional hardship should she be separated from the applicant. However, the letter from Dr. [REDACTED] states, to the contrary, that the applicant's wife does not have mood and anxiety disorders. Dr. [REDACTED] provided, "current mental status exam indicated the absence of both mood and anxiety disorders." He opined that the applicant's wife's relocation to Dublin, Ireland "would most likely be psychologically unsustainable for her" because of her close family ties in the United States. However, Dr. [REDACTED] does not provide an assessment of the impact of separation on the applicant's wife if she were to remain in the United States.

The applicant's spouse stated in her affidavit that she has had difficulty becoming pregnant and is under the care of an obstetrician to help her conceive. The director correctly noted that the applicant had not provided any medical records to establish his spouse's health condition(s), and treatment in the United States, and counsel submits no such evidence on appeal. Nor did the couple indicate the impact their separation will place on their plans to start a family.

The applicant's spouse also described her strong bond with the applicant and her interests in keeping their family unified. The applicant submitted affidavits from his father-in-law, mother-in-law, sister-in-law as well as numerous similarly worded affidavits from his friends, which briefly state that the applicant's spouse would suffer emotionally if she were separated from the applicant. While the record shows that the applicant and his spouse will experience emotional hardship if they are separated as a result of his inadmissibility, the applicant has failed to demonstrate that this hardship would be extreme.

With respect to the hardships suffered by the applicant's spouse if she were to relocate to Ireland, counsel asserts that she would suffer financial, medical and emotional hardships. In regard to financial hardships, counsel notes that the applicant's wife has secure employment in the United States as a paralegal and the applicant is self-employed in the construction business. Counsel contends that Ireland is undergoing a recession and the applicant and his wife would have difficulty finding comparable employment in the country. Counsel asserts that the applicant and his wife would be unable to find affordable housing in Ireland in which they can raise a family. The affidavits from the applicant's father-in-law, mother-in-law, sister-in-law and friends also state in general terms that the applicant's spouse would suffer from financial hardship if she relocated to Ireland. As previously discussed, the applicant has not provided any evidence of his construction business and earnings to establish the impact of the loss of his employment in the United States. Although counsel references statistics on the general economic climate in Ireland, he has not submitted specific evidence regarding the type of employment opportunities that would or would not be available to the applicant and his spouse in Ireland.

Counsel further contends that separating the applicant's wife from her strong family and community ties in the United States would cause her emotional hardship. The applicant's spouse stated in her affidavit that she and the applicant are very close with her family and they take annual vacations together. The letter from Dr. [REDACTED] states that during his meeting with the applicant's spouse, she discussed her close ties with her family members, in particular her father and paternal grandfather, and she does not believe she could live separately from them. Dr. [REDACTED] briefly opined in a one-sentence statement that the applicant's spouse's relocation to Ireland would most likely be "psychologically unsustainable" for her. Dr. [REDACTED] however, does not state the basis for his determination, nor does he explain how relocation would be unsustainable for the applicant's wife.

The record establishes that the applicant's spouse has a close relationship with her parents, sister and grandfather. The separation of family members often results in significant psychological hardship. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of the family relationship considered. For example, in *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968), the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. This case involves the separation of a 36-year-old adult daughter, who is married, from her parents and grandparent.

Counsel asserts that the applicant's wife is receiving medical care for fertility issues. As previously discussed, the applicant has not provided any medical documentation to establish the type of medical care she is currently receiving. Although the applicant's spouse stated in her affidavit that she will not receive the same level of quality of medical care in Ireland, as the director correctly noted, the applicant failed to provide documentation of the type of medical care that would or would not be available to her in Ireland. The applicant has not established that his spouse would not be able to access similar treatment for any medical condition(s) she may have in Ireland.

Counsel also asserts that the applicant and his wife believe that academic and other opportunities for their future children are greater in the United States. Both the applicant and his wife stated in their

affidavits, submitted below, that their future children would not receive the same education in Ireland as they would in the United States. Although hardship to children to the extent that it causes hardship to an applicant's qualifying relative spouse is given weight in an extreme hardship analysis, the applicant and his spouse do not have children. We may only consider the facts as they exist on appeal.

All presented elements of hardship to the applicant's spouse, should she relocate to Ireland, have been considered in aggregate. Based on the foregoing analysis, the applicant has not established that his spouse would suffer extreme hardship should she decide to relocate to Ireland to maintain family unity.

The applicant has not established that refusal of his admission to the United States would result in extreme hardship to his wife upon their separation or relocation to Ireland. Accordingly, the applicant is ineligible for a waiver of his inadmissibility under subsections 212(h)(1)(B) 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 an application for a waiver of inadmissibility under subsections 212(h) and 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.