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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:



Office: LONDON, ENGLAND

Date: JUN 03 2008

IN RE:



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. § 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Ireland who 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 subsequent to April 1, 1997. He seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen spouse.

The record reflects that the applicant entered the United States on September 23, 2002 under the terms of the Visa Waiver Program (VWP) and was granted an authorized period of stay until December 22, 2002. The applicant remained in the United States until May 24, 2004. The applicant married his U.S. citizen spouse, [REDACTED], on March 4, 2005 in Ireland. The applicant's spouse subsequently filed a Petition for Alien Relative (Form I-130) on the applicant's behalf at the U.S. Embassy in Dublin, Ireland. The petition was approved on July 11, 2005. The applicant also filed an Application for Immigrant Visa (Form DS-230) and an Application for Waiver of Ground of Excludability (Form I-601) at the Embassy.

The OIC determined that the applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act for seeking admission within ten years of his departure from the United States after having been unlawfully present in the United States from December 23, 2002 to May 24, 2004, a period in excess of one year. *Decision of OIC*, dated June 30, 2006. The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Id.*

On appeal, counsel submits "supplemental and new evidence" to establish that the applicant's spouse will suffer extreme hardship if the waiver is not granted. Counsel contends that the applicant will suffer extreme emotional and psychological hardship if she remains separated from her husband. He asserts that if the applicant's spouse chooses to relocate to Ireland to be with the applicant, she will lose her job and will also suffer emotional anguish as a consequence of separation from her family, particularly her ill grandmother for whom she provides care. Counsel also contends that the applicant's spouse's medical history and specific reproductive issues require that she have access to specialized and ongoing medical services in the United States that are not available in Ireland.

The appeal includes, among other documents, an affidavit from the applicant's spouse; an affidavit from Dr. [REDACTED], physician for the applicant's spouse's grandmother; an affidavit from [REDACTED], physician for the applicant's spouse; a psychological evaluation of the applicant's spouse by Dr. [REDACTED]; an affidavit from the mother of the applicant's spouse; an affidavit from the applicant; and letter from Congressman Jeb Bradley. The record also contains the following evidence that was submitted previously: a letter from [REDACTED] an affidavit from the applicant's spouse's parents; a letter from the applicant's spouse's employer; tax, employment and other financial records; and photographs. The entire record has been reviewed in rendering a decision on the appeal.

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-

....

(I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such alien's departure of removal, or

(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.

As stated above, the record reflects that the applicant entered the United States on September 23, 2002 under the terms of the Visa Waiver Program (VWP) and was granted an authorized period of stay until December 22, 2002, but remained in the United States until May 24, 2004. The applicant subsequently departed from the United States and is now seeking admission. Thus, the applicant accrued unlawful presence from December 22, 2002 to May 24, 2004, a period in excess of one year, and is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant has not disputed that he is inadmissible under this section.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. 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. Section 212(a)(9)(B)(v) 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).

U.S. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

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.

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 faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant’s spouse suffers emotionally as a result of separation from the applicant. In her affidavit submitted with the appeal, the applicant’s spouse indicates that since being separated from the applicant, she has lost a sense of “safety and security,” suffered from the recurrence of a longstanding eating disorder and depression, and experienced anxiety and panic attacks. [REDACTED] indicates in his evaluation that continued separation would exacerbate the applicant’s spouse’s eating disorder, panic attacks, and depression, and place her at risk for more serious symptoms. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant’s spouse and [REDACTED]. The record fails to reflect an ongoing relationship between a mental health professional and the applicant’s spouse or a history of treatment for the disorders suffered by the applicant’s spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established

relationship with a psychiatrist, thereby rendering the psychiatrist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. It is noted that in spite of the applicant's spouse's mental and emotional difficulties, she indicates that she has been able to continue working and assisting in the care of her grandmother. It is also noted that the applicant and her spouse have never lived together as husband and wife in the United States.

The hardship described by the applicant's spouse if she remains in the United States is the typical result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. 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 also determines that the applicant has failed to demonstrate by a preponderance of the evidence that his spouse will experience extreme hardship if she relocates to Ireland. The applicant's spouse and her parents indicate in their affidavits that the applicant's spouse provides "essential care" for her grandmother, who suffers from Alzheimer's. They indicate that no other family member can provide this care, and they cannot afford to pay for professional care. As indicated above, hardship to the grandmother of the applicant's spouse is relevant only insofar as it results in hardship to the applicant's spouse. The AAO acknowledges that the applicant's spouse will suffer hardship if her grandmother does not receive adequate care, but the applicant has failed to demonstrate that his spouse's presence in the United States is essential to her grandmother receiving such care. For example, it is noted that the applicant's spouse spent time away from her grandmother while the applicant's spouse was in Ireland from December 2004 to November 2005, and that she provides limited care to her grandmother since becoming employed away from home. In their affidavit dated August 2, 2005, the parents of the applicant's spouse indicate that their daughter's trip to Ireland "put strain on our family's ability to care for" the applicant's spouse's grandmother, but they do not assert that they were unable to care for her without their daughter. Although the statements by applicant's spouse's parents that they cannot afford professional care for her grandmother are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan*, 14 I & N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)).

Likewise, there is no evidence to show that the applicant could not find employment in Ireland, and the evidence that she would be unable to receive treatment to address any reproductive difficulties if she resides in Ireland is insufficient. In his letter, [REDACTED] states that it would not be feasible for the applicant to receive proper treatment in Ireland, but he provides not other information concerning the health care system in Ireland or the basis for his knowledge concerning the availability or lack of availability of appropriate medical services in that country.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 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 section 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.