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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE:

[REDACTED]

Office: CHICAGO, IL

Date:

JUL 07 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).

ON BEHALF OF APPLICANT:

[REDACTED]

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 District Director, Chicago, Illinois. 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 District Director 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 November 29, 2006.

On appeal, counsel for the applicant states that the District Director failed to consider or give proper weight to the evidence, and that the record establishes the applicant's spouse would suffer extreme hardship if the applicant is excluded.¹

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

¹ On appeal, counsel notes that the District Director considered the waiver application under section 212(i) of the Act. The AAO acknowledges that the waiver for a section 212(a)(9)(B)(i)(II) inadmissibility is found in section 212(a)(9)(B)(v) of the Act. However, as both waivers require the applicant to establish extreme hardship to a qualifying relative, the District Director applied the correct standard in evaluating the applicant's hardship claim.

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 in August 2002 and remained until he departed voluntarily in December 2004. As the applicant accrued more than one year of unlawful presence in the United States and is now seeking admission within ten years of his last departure, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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) 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-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).

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 an applicant’s waiver request.

The record includes, but is not limited to, counsel’s brief; statements from the applicant and his spouse; Internet printouts on a customer service job in Ireland, the religious makeup of Ireland, the cost of living in Dublin, Ireland, the symptoms of Parkinson’s disease, the symptoms of a feline disease, and animal importation requirements for Ireland; employment verification, pay stubs, bank

statements and tax documentation for the applicant's spouse; utilities, monthly billing statements, other invoices and a breakdown of monthly financial obligations for the applicant's household; insurance records; statements from family and friends; a surgical report regarding a 1992 surgery for the applicant's spouse; medical documentation for the applicant's spouse's mother; and photographs of the applicant, his spouse and their cat.

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

Counsel asserts the applicant's spouse has no family in Ireland, would not be able to find comparable employment or health benefits, suffers from endometriosis and cysts, would be unlikely to be able to conceive a child outside the United States, and would suffer anxiety and guilt if she left her mother in the final stages of an incurable illness. The applicant's spouse has asserted that, if she is unable to conceive naturally, she will need the infertility treatment available in the United States, and that she would suffer great hardship if she had to leave her sick mother. The applicant's spouse also indicates that she would have to leave her beloved cat behind if she relocated to Ireland as her cat suffers from Feline Infectious Peritonitis.

While the AAO acknowledges these claims, the record does not support the majority of them. It does not contain any medical documentation indicating that the applicant's spouse has been referred for fertility treatment. Neither does it demonstrate that she would be unable to receive fertility treatment in Ireland. The AAO also notes that the record does not offer a clear picture of the applicant's spouse's health as the only medical documentation of her endometriosis is from a 1992 surgery and there is no evidence that she continues to suffer from this medical condition. Although the record includes a 2003 electromyography examination of the applicant's spouse's mother indicating that its results are suggestive of early Parkinson's disease, the examination report concludes only that further neurological evaluation is warranted. The record does not document that the applicant's spouse's mother is undergoing any treatment for Parkinson's disease, her current ability to function or that she is dependent on her daughter for her care. While the AAO acknowledges the applicant's spouse's claim that she would suffer emotionally if she relocated to Ireland and left her mother in the United States, the record does not contain any documentary evidence, e.g., an evaluation of the applicant's spouse by a licensed mental health professional, to establish that *her separation from her mother would result in extreme emotional hardship*.

Counsel and the applicant's spouse have stated that she fears moving to Ireland because of anti-American sentiment in Europe and would be uncomfortable as a Protestant living in Ireland. The record, however, offers no documentary evidence that the applicant's spouse would be at risk from anti-American sentiment in Ireland, nor that her fear of moving there would result in emotional hardship for her. Neither does the record support the concerns expressed by the applicant's spouse about living as a Protestant in Ireland or demonstrate the impact that the applicant's spouse's concerns would have on her should she relocate. In addition, although the AAO acknowledges the concerns of the applicant's spouse for her cat if she relocates to Ireland and the restrictions placed on the movement of animals into Ireland, it *does not find the record to establish how or the extent to which she would be affected if she relocated to Ireland and was required to leave her cat in the United States*.

The applicant's spouse has also asserted she would be unable to find comparable employment in Ireland, as she would have to start in an entry-level position and prove herself all over again. She has also stated that she and the applicant would not be able to afford housing. In support of these claims, the record contains Internet printouts of an employment listing in Dublin and an article documenting the increase in housing prices in Ireland since 1996. The job listing is for a customer service position with a salary between €25,000-30,000, which on December 29, 2006, the date of the Form I-290B, was the equivalent of approximately \$33,000-\$39,000. The submission of a single employment advertisement is not, however, representative of the employment opportunities in the customer service industry in Ireland. Moreover, the inability to maintain a standard of living or pursue a chosen career does not constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996). In addition, general statistics on the national housing market in any given country are not sufficient to establish that an individual applicant or his spouse would be unable to find affordable housing in a particular region or location. The applicant has also submitted a cost of living breakdown indicating that the cost of living in Dublin is higher than in Brookfield, Illinois, his current residence. The record does not, however, establish that the applicant and his spouse would reside in Dublin. As such, the record does not demonstrate that the applicant's spouse would be unable to find employment or housing, or afford the cost of living in Ireland.

When viewed in its totality, the record does not establish that the applicant's spouse would suffer extreme hardship if she chose to relocate to Ireland with the applicant.

An applicant must also demonstrate that a qualifying relative will suffer extreme hardship in the event that he or she remains in the United States following the applicant's exclusion. On appeal, counsel contends that, if the applicant were removed to Ireland, his spouse would have to financially support him. He further contends that it would be financially impossible for the applicant's spouse to support a second household in Ireland where the standard of living is much higher. The applicant's spouse claims that she would be financially devastated if she could not depend on the applicant's income and has submitted a listing of various financial obligations to be paid from her monthly salary.

The AAO does not find the record to establish that the applicant would require financial support in Ireland. No evidence has been submitted to demonstrate that he would be unable to obtain employment in Ireland and provide for his own financial needs. Accordingly, the record does not support counsel's claim that the applicant's spouse would have to support her husband if he resided in Ireland. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The 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). The record also fails to demonstrate that the loss of the applicant's U.S. income would result in extreme financial hardship for his spouse. A review of the expenses that the applicant's spouse has indicated she would have to pay from her monthly salary finds that not all are recurring costs, e.g., Visa and Home Depot balances, and household expenses. The record also contains no evidence of the applicant's income or the extent to which he supports his and his spouse's household. Further, it fails to demonstrate

that the applicant would be unable to obtain employment in Ireland and financially assist his wife from abroad. Therefore, the record does not establish that applicant's spouse would be financially devastated in the event of the applicant's exclusion from the United States. The AAO also notes that economic hardship, by itself, does not constitute extreme hardship. *INS v. Jong Ha Wang*, 450 U.S. 139 (1981). Accordingly, the record does not demonstrate that the applicant's spouse would experience extreme hardship if he were to be excluded and she remained in the United States.

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 he is refused admission, or that any hardships on her would rise above those normally experienced by the relatives of excluded aliens. 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 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 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.