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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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DATE: **MAY 27 2011**

Office: LONDON, ENGLAND

FILE:

IN RE: Applicant:

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), and section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, 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), and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure, and misrepresenting his intent to reside in the United States while entering under the Visa Waiver Program. He is married to a United States citizen and has one United States citizen daughter. He seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(i).

The Field Office 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 December 17, 2008.

On appeal, counsel for the applicant states that the Field Office Director failed to consider the effect of the applicant's loss of employment on his spouse, failed to consider the impact of the separation from her U.S. family on the applicant's spouse and failed to consider the overall impact on the applicant's spouse. *Form I-290B*, received on January 21, 2009.

The record includes, but is not limited to, counsel's brief; a statement from the applicant's spouse; a statement from the applicant; a statement from [REDACTED], regarding the applicant's spouse's pregnancy; a statement from [REDACTED] a statement from [REDACTED], dated January 15, 2009, pertaining to the applicant's spouse; a statement from [REDACTED], pertaining to the applicant's spouse's mother; a statement from the applicant's spouse's mother; a statement from [REDACTED], a co-worker of the applicant's spouse; a copy of the employment questionnaire for the applicant's employment position; copies of utility bills, credit card and bank statements, tax returns and pay stubs; pictures of the applicant and his spouse; and a letter from the applicant's employer.

The entire record was reviewed and all relevant evidence 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.

....

The record indicates that the applicant entered the United States under the Visa Waiver Program on June 10, 2000, and remained beyond his authorized period of stay until April 2001, accruing six months of unlawful presence. The applicant entered the United States again under the Visa Waiver Program on or about May 10, 2001, and remained beyond his authorized period of stay until December 26, 2002, accruing sixteen months of unlawful presence. The applicant entered the United States under the Visa Waiver Program on January 9, 2003, and remained beyond his authorized period of stay. He filed a Form I-485 on April 18, 2004, which was denied on September 7, 2005. He filed a subsequent Form I-485 on February 17, 2006, which was denied on November 15, 2006. The applicant departed the United States on April 30, 2008. He accrued unlawful presence from December 11, 2000 through April 2001, from October 11, 2001 until December 26, 2002, from July 10, 2003 until April 18, 2004, the date he filed his first I-485, from September 8, 2005 until February 16, 2006, the date he filed his second Form I-485, and from November 16, 2006 until April 29, 2008, the date he departed the United States. As the applicant has resided unlawfully in the United States for over a year and is now seeking admission within ten years of his last departure from the United States, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (i) **In general.** 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 chapter is inadmissible.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as proscribed by Section 212(i):

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 Attorney General 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 . . . .

The record indicates that the applicant entered the United States on June 10, 2000, May 10, 2002, and January 9, 2003, from Ireland, unlawfully residing and working for more than one year in that period. When the applicant entered the United States in May 10, 2002, and January 9, 2003, having previously accrued unlawful presence, the applicant falsified information on his entry document, the Form I-94W, in order to gain entry to the United States under the Visa Waiver Program. As such, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest these findings.

The applicant's waiver application will be examined under section 212(a)(9)(B)(v) of the Act, as any waiver under that provision will also establish that he is eligible for a waiver his inadmissibility under section 212(a)(6)(C)(i) of the Act. A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact

that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

*Id.* See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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).

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.*

We observe that 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., *In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, 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. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant’s qualifying relative, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The AAO will first consider hardship upon relocation. On appeal counsel for the applicant asserts that the Field Office Director failed to consider the cumulative effect on the applicant’s spouse if she were to separate from her family in order to relocate, her inability to transfer her education and skills to Ireland and the impact on her of the loss of the business that the applicant built while he was

working without authorization in the United States. He explains that the applicant's spouse is close to her family and that her family needs her physical support due to medical conditions.

Although counsel and the applicant's spouse assert that the applicant's spouse would be unable to find adequate employment in the healthcare industry in Ireland, there is insufficient evidence in the record to support this assertion. *Brief in Support of Appeal*, dated February 16, 2009. The record contains a statement from the applicant's spouse and a letter from her employer explaining the specialized nature of her employment; however the record contains no documentation about the country conditions in Ireland, the state of the healthcare industry or the availability or presence of similar or equivalent employment positions. There is no documentation that indicates her skills would not be transferrable to another field, or the same type of work generally in Ireland. Even if the applicant's spouse were unable to find a position specifically accommodating her specialized training, it has not been established that she would not be able to find employment in a related field. As noted by counsel, the inability to find employment in one's desired field is not considered an uncommon hardship factor. In this case, the record does not indicate that this would be a significant hardship factor.

The applicant's spouse states that it would present an economic hardship to her if she had to sell two houses in order to relocate to Ireland. It has not been established that having to sell one's house or property is an uncommon impact in order to relocate abroad, and as such, there is no evidence that this impact constitutes an uncommon hardship factor.

The applicant's spouse also asserts her mother has osteoarthritis, that she will need a hip replacement requiring a period of physical rehabilitation, and that she cannot contemplate not being present to assist her mother during this time. *Statement of the Applicant's spouse*, undated, received March 18, 2009. In a statement dated February 7, 2006, Dr. [REDACTED] states that the applicant's spouse's mother suffers from progressive osteoarthritis. He further states "at times, her disease can be disabling and she requires assistance from other caregivers to complete her activities of daily living." The AAO finds this statement to be so general that it cannot determine the severity or current degree of impact the condition has on the applicant's spouse's mother. There is nothing further in the statement, and nothing which corroborates that the applicant's spouse's mother has a pending hip or knee replacement surgery. The statement does not indicate that the applicant's spouse is currently providing any physical support for her mother, or that the applicant's spouse's step-father is unable to provide any necessary assistance. Both the applicant's spouse and her mother have emphasized the fact that the applicant's spouse has significant family in within sixty miles of her, and statements that other family members would be unable to assist the applicant's spouse's mother with her condition do not adequately address why they would be unable to assist when or if she is ever deemed by a doctor to be in need of hip or knee replacement surgery. The AAO notes that the applicant's spouse's mother is not a qualifying relative, and based on the observations above the record fails to establish that there is currently a significant impact on the applicant's spouse based on her mother's medical condition.

Both counsel and the applicant's spouse assert that she needs to remain close to her family in order to support them due to medical conditions. The applicant's spouse's mother made a statement in which she asserts that her daughter has been helpful in caring for her step-father while he was in the hospital for tongue cancer, and that she continues to play a role in his care. *Statement of the Applicant's Spouse's Mother*, dated April 19, 2006. While the AAO acknowledges this statement, it is not supported by other evidence and not fully explained in the statement how the applicant's spouse is impacted, or why other family members are unable to provide adequate physical support for her step-father. The applicant's spouse's step-father is not a qualifying relative. In this case there is insufficient evidence to indicate that the applicant's spouse will experience any uncommon impact due to her step-father's condition if she were to relocate with the applicant.

Even when the hardships asserted in this case are considered in aggregate, there is insufficient evidence to establish that they rise above the common impacts experienced by relatives of inadmissible aliens who relocate abroad with their family members.

With regard to hardship upon separation, counsel for the applicant asserts that the applicant's spouse suffers from Placenta Previa which resulted in a high risk pregnancy, that she is being treated for anxiety due to postpartum depression and separation from the applicant and that she suffers from Keratoconus, an eye condition. Counsel further asserts that, without the applicant's presence, the applicant's spouse will suffer financial hardship due to the loss of income provided by his business and physical hardship because she will be a single parent and unable to assist her family members who have medical issues.

The AAO notes that the applicant's spouse has since had her daughter without any complication. The record contains a statement from [REDACTED] dated March 27, 2007, stating that the applicant's spouse is being cared for due to a high risk pregnancy, and has been diagnosed with Placenta Previa, but it fails to indicate that this condition has had any continuing impact on the applicant's spouse, and as such, it cannot be determined that it currently poses a hardship challenge to the applicant's spouse.

The applicant's spouse asserts she suffers from Keratoconus, and includes a letter from her optometrist. In a statement dated January 15, 2009, [REDACTED] states that he is "following the patient carefully for a condition that affects the cornea called Keratoconus." The AAO notes that he does not state that she has actually been diagnosed with the condition, and the statement explains that currently her corrected visual acuity is 20/20. This statement does not indicate that she is currently experiencing any significant impact from this condition, or that she has any condition which impacts her ability to function on a daily basis. As such, the record fails to establish that the applicant's spouse has a visual condition that is resulting in a hardship on her due to the applicant's absence.

Counsel asserts on appeal that the Field Office Director failed to consider the impact on the applicant's spouse of the loss of the applicant's business. The AAO would note that the applicant was not authorized to be employed in the United States. The record contains one letter from the

applicant's employer stating that the company expected to make between \$500,000 and \$800,000 in 2006. *Statement of the Applicant's Employer*, May 8, 2006. The AAO finds no basis for this assertion as there is no documentation in the record indicating that the applicant's painting business made or would make \$500,000 or more in 2006. In fact, the same letter states that the applicant had worked for nearly a year without compensation, a fact inconsistent with an assertion that the company was about to earn the amount listed. There is nothing in the record which corroborates that the applicant actually contributed any income towards the household finances. By contrast, a letter from the applicant's spouse's employer and the applicant's spouse indicate that she earns roughly \$52,000 annually. The applicant's spouse does list some of her monthly financial obligations. However, it is noted that she did not explain her total income, such as any moneys she received from the rent of their investment property or the continued operations of the company the applicant operated while in the United States. Assertions that the applicant contributed significantly to the family's income, or that the applicant's spouse would be impacted by the loss of income from the applicant's employment are not persuasive.

Counsel has also asserted that the Field Office Director failed to consider the psychological hardship of the applicant's spouse. The record contains a single statement regarding the mental health of the applicant's spouse from one [REDACTED] states that the applicant's spouse has been her client and that she previously treated the client for anxiety. *Statement of [REDACTED]*. January 13, 2009. She states that the applicant's spouse has experienced extreme and unusual hardship due to the separation from the applicant. The letter does not provide a basis for this conclusion, such as administered psychological examinations or examination of medical history or other records. The AAO further notes that a determination of extreme hardship is a legal standard and reserved to the discretion of the Attorney General. [REDACTED]'s letter states that the applicant's spouse is depressed and anxious, but does not render any official diagnosis of any mental health condition or reference any industry manuals or standard of medical care in reaching her conclusion. While the AAO acknowledges that the applicant's spouse may experience some emotional hardship due to the separation from the applicant, based on the observations noted above, [REDACTED]'s letter is not sufficiently probative to make a determination that the applicant's spouse is experiencing any emotional or psychological hardship which rises above that commonly experienced by the relatives of inadmissible aliens.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if she remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship articulated in this case, based on the evidence in this record, does not rise above the common result of removal or inadmissibility and thus does not constitute extreme hardship. 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. As the applicant has failed to establish that a

qualifying relative will experience extreme hardship, no purpose would be served in determining whether he warrants 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.