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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



HS

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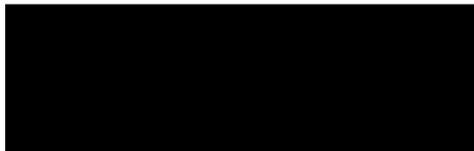
Office: CHICAGO, ILLINOIS

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility under 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 must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


for
Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of the United Kingdom and citizen of the United Kingdom and Ireland, who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for entering the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Immigrant Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States.

In a decision dated June 4, 2009, the Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated June 4, 2009.

On appeal, the applicant's attorney submitted a brief in support of the applicant's waiver application. The applicant's attorney contends that the qualifying spouse would suffer emotional, psychological and financial hardships if she were to live in the United States without the applicant or if she were to relocate to Ireland with the applicant. The applicant's attorney also asserts that the applicant and qualifying spouse's child has medical issues which pose a hardship to the qualifying spouse if she were to relocate. The applicant's attorney also states that the qualifying spouse's mother has medical issues, and that the qualifying spouse supports and takes care of her and her sister. The applicant's attorney further indicates that the qualifying spouse has close family ties to the United States.

The record contains an Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal (Form I-290B); briefs in support of the applicant's waiver application; medical records for the qualifying spouse, the applicant and their child; internet materials regarding various medical conditions and drugs; a psychological evaluation; articles regarding Ireland's economy; an approved Form I-130; financial documentation and other documentation submitted in conjunction with the Application to Adjust Status (Form I-485).

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:

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

A waiver of inadmissibility under section 212(i) 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. The applicant's wife 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-Morales*, 21 I&N Dec. 296, 301 (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).

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.

In the present case, the record reflects that the applicant was admitted to the United States under the visa waiver program on April 25, 2002 using a United Kingdom passport in the name of his brother. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through fraud or misrepresentation.

The applicant’s qualifying relative is his wife, who is a United States citizen. The documentation provided that specifically relates to the qualifying spouse’s hardship includes Form I-601; Form I-290B; briefs in support of the applicant’s waiver application; medical records for the qualifying spouse, the applicant and their child; internet materials regarding various medical conditions and drugs; a psychological evaluation; articles regarding Ireland’s economy; financial documentation and other documentation submitted with Form I-485. The entire record was reviewed and considered in rendering a decision on the appeal.

As previously stated, the applicant’s attorney contends that the qualifying spouse would suffer emotional, psychological and financial hardships if she were to live in the United States without the applicant or if she were to relocate to Ireland with the applicant. The applicant’s attorney also asserts that the applicant and qualifying spouse’s child has medical issues which pose a hardship to the qualifying spouse if she were to relocate. The applicant’s attorney also states that the qualifying spouse’s mother has medical issues, and that the qualifying spouse supports and takes care of her and her sister. The applicant’s attorney further indicates that the qualifying spouse has close family ties to the United States.

Based on the evidence on the record, the AAO finds that the applicant has not provided sufficient evidence to establish that his wife will suffer extreme hardship as a consequence of being separated from him. The applicant's attorney contends that the applicant's wife would suffer emotional and psychological hardships if the applicant were to return to Ireland and the qualifying spouse would remain in the United States. The record contains a psychological evaluation with regard to this hardship. The psychological evaluation indicates that the qualifying spouse is "at risk for a serious reactive depression as a result of the separation from her parents and siblings" if she relocates with the applicant and that the birth of her first baby makes her "particularly vulnerable emotionally and physically to a loss." Further, the psychologist believes that the qualifying spouse's depressive reaction will have serious and damaging effect on her son because "depression and anxiety are easily communicated to an infant and are harmful." Further, the applicant's attorney indicated in a recent letter that the qualifying spouse is pregnant with their second child, submitting a medical record to confirm her pregnancy, which he believes is relevant to the level of hardship. Although the input of any mental health professional is respected and valuable, the record fails to reflect an ongoing relationship between the mental health professional and the qualifying spouse or any treatment plan for the conditions noted in the evaluation, to further support the gravity of the situation. Moreover, the evidence provided failed to provide detail or supporting evidence explaining how the qualifying spouse's emotional and psychological hardships are outside the ordinary consequences of removal. Further, the evaluation also failed to provide any definitive diagnosis with regard to the qualifying spouse's psychological issues. It is unclear whether the qualifying spouse's potential "reactive depression" would be other than a normal consequence of removal. Further, while we understand that the qualifying spouse's potential depression could have deleterious affects on her child, it is unclear how separation will specifically affect her infant and how such effects would differ from other similarly situated infants. Further, there was no specific information, other than the assertions by the attorney, as to how the second child would contribute to the qualifying spouse's emotional and/or psychological hardships. Although the AAO recognizes that the applicant's spouse will experience emotional consequences as a result of her separation from the applicant, the record does not establish that her hardships will be an unusual result of separation.

Further, the applicant's attorney asserts that the qualifying spouse and her family will "suffer catastrophic financial losses if they move to Ireland" because their "assets are tied up in their home, two properties, and a third that [REDACTED] co-owns." The record does not indicate whether the qualifying spouse could return to her work as a real estate agent or work in another field, or whether she could support her family were the applicant to relocate to Ireland without her. Further, there is no financial documentation in the record to demonstrate the qualifying spouse's current financial situation including her income and expenses. There is also no documentation to confirm the ownership of or indicate the cost and maintenance associated with any property they may own. The record only contains the financial documentation submitted with Form I-485, and no current financial documents were submitted on appeal. The assertions of the applicant's attorney will be considered. However, assertions cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *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)).

The applicant's attorney also asserts that the qualifying spouse's child has medical issues, and that the qualifying spouse would suffer hardship as a result of his issues if they were to relocate. The applicant's attorney states that the qualifying spouse "is concerned about [the child's] health conditions and wants to ensure that he receives good medical care." See *Brief in Support of Respondent's I-290B*, page 4. However, there is no evidence in the record to indicate that the medical care in Ireland would not be sufficient or that the child has an ongoing relationship with a medical specialist in the United States. Further, although the applicant submitted some medical records for their child which confirm that he has a heart murmur, it is unclear specifically how the applicant and qualifying spouse's child is affected by his heart murmur, or what treatment, if any, is needed. Likewise, the applicant's attorney contends that the qualifying spouse cares for her mother who suffers from chronic migraines, anxiety and depression and the qualifying spouse also helps to support her sister who lives with her. The record failed to contain any documentary support to confirm the medical issues of the qualifying spouse's mother or of their child's current condition, such as a letter from a physician with a clear diagnosis, prognosis for recovery, and description of any treatment needed. Further, the applicant failed to provide any proof, other than the assertions made by the applicant's attorney, that the qualifying spouse is providing emotional or economic support to her family. 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 Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1,3 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The applicant's attorney also asserts that the qualifying spouse would encounter financial hardships if she relocated with the applicant. While the applicant would lose his employment if he left the United States, this is a common result of removal or inadmissibility, and the applicant has failed to submit detailed evidence concerning his spouse's current employment. Moreover, it is unclear whether the applicant is currently employed, as the appeal brief indicates he hasn't worked as a foreman for over four months. The record does contain documentation regarding the construction business in Ireland, and it does appear that the applicant would have a difficult time finding employment in construction. However, it is unclear whether the applicant could find work in another field or if the qualifying spouse could find work using her business degree in Ireland.

Lastly, the applicant's attorney also indicates that the qualifying spouse has close family ties to the United States and that she provides support for her mother and sister in the United States. However, there was no supporting documentary evidence to demonstrate the nature of the qualifying spouse's relationship with her family or that they would be unable to visit her if she relocated to Ireland.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying spouse, 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 United States citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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 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.