



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **APR 10 2013** OFFICE: CHICAGO, IL

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v)

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 in accordance with the instructions on 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 Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal was rejected by the AAO as untimely on February 4, 2013. The AAO now moves to reopen the matter *sua sponte* based on submission of evidence that the appeal was timely filed. The February 4, 2013 AAO decision will be withdrawn. The appeal will be dismissed.

The applicant is a native and citizen of Ireland, who was found to be inadmissible to the United States under sections 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States by willfully misrepresenting a material fact; and 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the country for more than one year and seeking readmission within ten years of his departure. The applicant is married to a U.S. citizen, and he is the beneficiary of an approved Form I-130, Petition for Alien Relative. He seeks waivers of inadmissibility pursuant to sections 212(i) and 212(a)(9)(B)(v) of the Act, 8 U.S.C. §§ 1182(i) and 1182(a)(9)(B)(v), in order to live in the United States with his U.S. citizen spouse.

In a decision dated March 24, 2012, the director concluded that the applicant failed to establish his wife would experience extreme hardship if he were denied admission into the United States. The waiver application was denied accordingly.

On appeal, the applicant asserts through counsel that in determining his inadmissibility under section 212(a)(6)(C) of the Act, the director improperly relied on undisclosed derogatory information, and that under 8 C.F.R. § 103.2(b)(16), the director was obligated to provide the applicant with a copy of the derogatory information prior to making the inadmissibility finding. Counsel asserts further that the applicant did not “think that he was doing anything wrong” when he returned to the United States after being denied admission and was admitted with a new passport issued under his Gaelic name. Counsel also asserts that the director incorrectly applied the extreme-hardship standard and abused her discretion in the applicant’s case; evidence establishes the applicant’s wife would experience extreme emotional, financial, and physical hardship if the applicant were denied admission; and the applicant merits a favorable exercise of discretion. In support of the assertions, counsel submits letters from the applicant and his wife, their employers, co-workers, friends, and family; medical documentation; and financial and business information.

The record also contains a psychological evaluation for the applicant’s wife, country-conditions information and newspaper articles about Ireland, photographs, and criminal records of the applicant. The entire record was reviewed and considered in rendering a decision on the appeal.

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 states:

- (1) The Attorney General [Secretary, Department of Homeland Security "Secretary"] may, in the discretion of the [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 [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.

A misrepresentation is generally material only if by it, the alien would or did receive an immigration benefit for which she or he would not otherwise have been eligible. See *Kungys v. United States*, 485 U.S. 759; 108 S. Ct. 1537 (1988); see also *Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). The misrepresentation must be deliberate and voluntary, however, proof of intent to deceive is not required, and knowledge of the falsity of a representation is sufficient. See *Espinoza-Espinoza v. INS*, 554 F.2d 921, 925 (9th Cir. 1977). The willful misrepresentation of a material fact must be made to an authorized official of the government in order for inadmissibility under section 212(a)(6)(C)(i) of the Act to be found. See *Matter of Y-G-*, 20 I&N Dec. 794 (BIA 1994); *Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *Matter of Shirdel*, 19 I&N Dec. 33 (BIA 1984); *Matter of L-L-*, 9 I & N Dec. 324 (BIA 1961).

In the present matter, the record contains evidence reflecting that on February 17, 2002, the applicant sought admission into the United States pursuant to the visa waiver program with an Irish passport issued under the name [REDACTED]. The applicant admitted to U.S. immigration officers in a February 17, 2002 sworn statement, that he had previously entered the United States on February 22, 1999, pursuant to the visa waiver program, and that he had been employed and remained unlawfully in the country until December 2001. On this basis, immigration officers refused the applicant admission, and he was returned to Ireland.

Although the passport issued to the applicant under the name [REDACTED] was valid until 2007, the record reflects the applicant applied for and was issued a new passport on February 21, 2002, under his Gaelic name, [REDACTED]. On February 23, 2002, the applicant used his new passport to gain admission into the United States under the visa waiver program.

Counsel asserts that the applicant was legally entitled to obtain a new passport in his Gaelic name, and that the applicant did not "think that he was doing anything wrong" when he applied for a new passport. The applicant states further in a September 13, 2010 affidavit, that it was common to use Gaelic names where he lived in Ireland and that he often used his Gaelic name when he was younger. In addition, the applicant indicates on appeal that he suffers from dyslexia and that he

was confused and did not understand all of the questions he was asked at the airport in 2002. The applicant submits two medical letters confirming that dyslexia affects his concentration, memorization and reading.

The AAO finds the assertions by counsel and the applicant to be unconvincing. The applicant's February 17, 2002 sworn statement clearly reflects the applicant stated to U.S. immigration officers that he never used any name other than [REDACTED]. The record additionally reflects that the applicant stated in a sworn affidavit signed at his adjustment of status interview on May 6, 2010, that immigration officials told him "to apply for a visa to re-enter the United States" when he was denied entry in February 2002. When asked why he did not apply for a visa prior to his entry on February 23, 2002, the applicant replied, "I didn't I [sic] would get one; I did not know the procedure." In addition, the Form I-94W Nonimmigrant Visa Waiver Arrival Departure Form completed and signed by the applicant under his Gaelic name on February 23, 2002, reflects that the applicant answered "no" to question F, which asks if he had "ever been denied a U.S. visa or entry into the U.S."

The letters confirming that the applicant has dyslexia do not demonstrate or establish that the applicant was confused and did not understand the questions he was asked at the airport on February 17, 2002, or when he failed to disclose his denial of admission under a different name on his Form I-94W on February 23, 2002. Moreover, the evidence in the record reflects the applicant was aware of his inadmissibility on February 17, 2002, and that he needed to procure a visa to reenter the United States. The record also shows that he knowingly used another name and did not disclose his refusal six days earlier to gain admission into the country on February 23, 2002. The misrepresentations made by the applicant were material, in that he would have been denied admission into the United States if immigration officials had been aware that he was [REDACTED] and that he had previously been found inadmissible. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Counsel asserts that the director was obligated under 8 C.F.R. § 103.2(b)(16) to provide a copy of the derogatory information to the applicant before finding him inadmissible under section 212(a)(6)(C)(i) of the Act. 8 C.F.R. §103.2(b)(16) provides in pertinent part that an applicant is "permitted to inspect the record of proceeding which constitutes the basis for the decision." If an adverse decision is based on derogatory information of which the applicant is unaware, the applicant "shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered." 8 C.F.R. §103.2(b)(16)(i).

The AAO notes that an individual or their attorney may request access to information in their alien file in writing, or by filing a Form G-639, Freedom of Information/Privacy Act Request. See 5 USCA § 552. The AAO notes further that the requirement at 8 C.F.R. §103.2(b)(16)(i) does not apply in the present case, as the record establishes the applicant was aware of the derogatory information used by the director in determining his inadmissibility. Counsel therefore failed to establish that the director violated the applicant's right to inspect the record, or that the applicant

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was entitled to an opportunity to rebut the derogatory information prior to a decision, as set forth in 8 C.F.R. § 103.2(b)(16).

Section 212(a)(9)(B)(i) of the Act provides in pertinent part that any alien 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.

Section 212(a)(9)(B)(v) of the Act provides in pertinent part:

Waiver.-The [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.

The applicant's passport and February 17, 2002 sworn statement reflect the applicant was admitted into the United States on February 22, 1999, with permission to remain for 90 days, through May 1999. He told U.S. immigration inspectors that he remained in the country until December 2001.

Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure, remains in force until the alien has been absent from the United States for ten years. The applicant was unlawfully present in the United States for over one year between May 1999 and December 2001, and he has not been absent from the country for ten years. Accordingly, the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act. Counsel does not contest the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

Sections 212(i) and 212(a)(9)(B)(v) of the Act provide that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *Matter of Mendez-Morales*, 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*, 22 I&N Dec. 560, 565 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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).

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 v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 applicant's U.S. citizen wife is his qualifying relative under sections 212(i) and 212(a)(9)(B)(v) of the Act.

The applicant states that he is the main income earner in their family, that his wife would be unable to pay their mortgages and bills on her salary, and that they would lose their home and business properties if his waiver application were denied. His wife also suffers from "serious anxiety," which could become worse if he departed the country or she moved to Ireland with him. He states he has over 3.5 million dollars in "personally guaranteed loans" and his wife worries that she will be left with a large financial burden without him. His wife also hopes to pursue a new career in real estate, and they want to have and raise children in the United States near their families.

The applicant's wife states that although she was born and raised in Ireland, she obtained U.S. citizenship through her naturalized parents. She moved to the United States in 2004 after completing college in Ireland, and she has many close family members in the Chicago area. She does not know the construction industry and would be unable to run the applicant's businesses on her own. She would also be unable to pay their monthly mortgages on her salary, and she fears they will lose their businesses and property. She feels anxious and has difficulty eating and sleeping. She also has fibrocystic breast disease, and because her employers do not provide medical coverage, she depends on the applicant to provide her medical insurance. She started a new job as a housing rental agent about a year ago, she hopes to get her real estate broker's license and to obtain a graduate degree in education in the future, and she would be unable to realize her career and educational goals without the applicant's help in the United States or if she moved to Ireland. The Irish medical care system is also inferior to that in the United States and she would have to wait for months for medical procedures unless they have private insurance. In addition, she and the applicant would be unable to find gainful employment in Ireland due to the poor economy, and they would lose their savings and income and would suffer financially.

Medical evidence confirms the applicant's wife was diagnosed with fibrocystic breast disease, the disease was found to be benign, and she requires annual follow-up ultrasounds. Moreover, a licensed clinical social worker states the applicant's wife is experiencing anxiety and mild depression due to stress related to her career and the applicant's immigration situation. The evaluator expresses concern that the applicant's wife's anxiety and depression will worsen if she remains in the United States without the applicant, because he provides for her financially and represents a better future for her and that her conditions would worsen in Ireland because she has no family or support system there.

Employment evidence reflects the applicant's wife is employed full-time as a housing rental agent and she also works as a server and bartender at a restaurant. She earned \$28,587 in 2010 and \$21,672 in 2011. Neither employer provides her with health insurance benefits.

The record contains a \$316,000 promissory note and settlement statement for a home purchased by the applicant and his wife in April 2012. Business and property evidence reflects the applicant is one of three co-directors of a condominium association, where the applicant states his home is

located. The applicant is the manager of (b)(6) and he holds a 100% shareholder interest in the company. The applicant also holds a 100% shareholder interest in three construction companies: and he holds a 50% shareholder interest in Bank evidence reflects the applicant has over one million dollars in construction loans that are personally guaranteed by the applicant and secured by various properties.

The record also contains utility bills and bank statements for the applicant and his wife, a list of family members who live in the United States, and country-conditions evidence discussing economic and political conditions in Ireland.

Upon review, the AAO finds that the evidence in the record, when considered in the aggregate, establishes the applicant's wife would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant is denied admission and she remains in the United States. The applicant's wife has fibrocystic breast disease that requires regular medical monitoring, and evidence demonstrates she is dependent on the applicant for medical insurance coverage. A mental-health professional expresses concern that the applicant's wife's anxiety and depression will worsen if she remains in the United States without the applicant. The applicant's wife is not involved in running the applicant's businesses and could lose their businesses and properties if the applicant did not manage them. Evidence also reflects that the applicant's wife would be unable to pay for their family's bills and mortgages on her salary. The evidence, considered in the aggregate, establishes that the hardship the applicant's wife would suffer if she remains in the United States goes beyond the common results of inadmissibility and rises to the level of extreme hardship.

The AAO finds, nevertheless, that the evidence in the record, when considered in the aggregate, fails to establish the applicant's wife would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission into the country and she relocated with him to Ireland. The clinical social worker's concern that the applicant's wife would suffer increased anxiety and depression because she has no family or support system in Ireland is of limited value, given statements by the applicant's wife that she is originally from Ireland, and her parents and two younger brothers continue to live there. In addition, the record fails to establish that family members in the United States would be unable to visit the applicant's wife in Ireland, or that she would be unable to visit her family in the United States. The evidence also fails to establish the applicant's wife would be financially responsible for the loans taken out by the applicant. Furthermore, although country-conditions information reflects a high unemployment rate in Ireland, it is noted that the reports are general in nature and the record lacks other evidence establishing the applicant and his wife would be unable to obtain employment there. Evidence reflects the applicant's wife was born, raised and educated in Ireland. She thus would be able to reside, attend school, and work legally there. Evidence also fails to corroborate assertions that the applicant's wife would receive substandard medical care in Ireland. A U.S. Department of State report reflects that Ireland has "modern medical facilities" and "highly skilled medical specialists." See [http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_1145.html](http://travel.state.gov/travel/cis_pa_tw/cis/cis_1145.html). Although the report notes that there may be long waiting lists for medical specialists and hospital admissions for

some medical conditions, there is no indication that the applicant's wife's need for annual monitoring of her fibrocystic breast disease condition could not be met in Ireland.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case. Furthermore, because 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 an application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely 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 February 4, 2013 AAO decision will be withdrawn. The appeal will be dismissed.