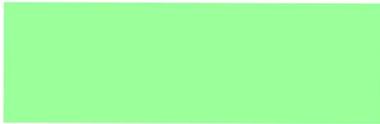




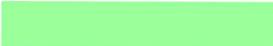
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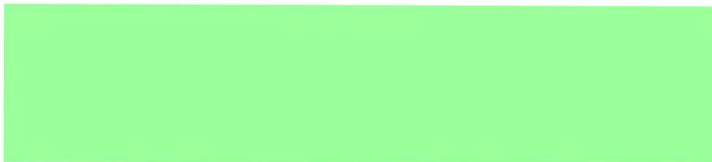
Office: PHILADELPHIA

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Philadelphia, Pennsylvania, and a subsequent motion was dismissed. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of 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 having procured a visa, other documentation, or admission into the United States by fraud or willful misrepresentation. The applicant does not contest this finding of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse and eight¹ children

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated April 7, 2011.

On motion, the field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative. The motion was dismissed. *See Decision of the Field Office Director*, dated December 12, 2013.

On appeal, filed on January 14, 2014 and received by the AAO on August 12, 2014, counsel for the applicant submits the following: a brief and affidavits from the applicant and her spouse. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

- (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.

....

- (ii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the

¹ In her March 18, 2014 affidavit, the applicant stated that she was five months pregnant with her eighth child. In a letter dated November 14, 2014, counsel documents that the applicant gave birth to her eighth child on July [REDACTED]

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.

With respect to the field office director's finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, the record establishes that the applicant utilized her sister's passport on multiple occasions between 1999 and 2005 to procure entry to the United States. We concur with the field office director that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud and/or willful misrepresentation.

The record reflects that in September 2013, the applicant was arrested and charged with Endangering the Welfare of Children, Corruption of Minors and Retail Theft, based on an incident on September 26, 2013. In her November 17, 2014 letter to this office, counsel contends that the disposition of these charges is pending. As there has been no final disposition, the issue of whether or not the applicant has been convicted of a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act cannot be determined. Nevertheless, because the applicant is inadmissible under sections 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), we need not determine whether the applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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 U.S. citizen spouse is the only qualifying relative in this case. Hardship to the applicant or the children can be considered only insofar as it results in hardship to a qualifying relative. 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 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 spouse asserts that he will suffer emotional and financial hardship were he to remain in the United States while the applicant relocates abroad due to her inadmissibility. In a declaration he explains that he and the applicant were married in [REDACTED] when he was 19 years old, and they have seven² U.S. citizen children together. He maintains that he would spiral into

² As noted above, they applicant and her spouse now have eight children.

depression if he were separated from the applicant for a long-term period. The applicant's spouse further explains that he relies on his wife to care for their children while he works 12-14 hours a day as the sole financial provider for the family. He explains that his wife does everything in the household from watching the kids, cleaning, cooking, grocery shopping, laundry, and anything else needed to ensure the family is functioning properly. Were his wife to relocate abroad, the applicant's spouse maintains that his life would quickly unravel as he would not be able to care for the children properly while financially providing for the family. He notes that his parents and his siblings have their own obligations and cannot be expected to care for seven children while he works long hours and the applicant resides abroad. Finally, the applicant's spouse details that he suffers from learning developmental issues and has substantial problems with basic math and reading. He maintains that he relies on his wife to help the children with their school work and help him with handling all the administrative issues involving his business and were she to relocate abroad, he would not be able to help his children academically or continue running his business effectively.

The applicant has submitted evidence establishing that her husband has been treated in the past for severe generalized anxiety generated by the concern that his spouse will return to her home country. In addition, the applicant has submitted evidence establishing her husband's business and confirming that he is the sole financial provider for the family. Further, a psychological evaluation has been submitted establishing that the applicant's spouse is functionally illiterate and has highly limited arithmetic skills and relies on the applicant to assist him in running his business. The evaluator also references that the applicant's spouse is highly anxious and moderately depressed, has been treated for anxiety in the past, and relies on his wife to be the emotional and functional lynchpin of the family. Finally, letters in support have been provided from the applicant's and her spouse's extended family and friends outlining the hardships the applicant's spouse would face were the applicant to reside abroad as a result of her inadmissibility. Were the applicant to relocate abroad, her spouse would become primary caregiver and financial provider to eight children, without the emotional and physical support of his spouse. The record reflects that the cumulative effect of the emotional and financial hardship the applicant's spouse would experience due to the applicant's inadmissibility rises to the level of extreme.

The applicant's U.S. citizen spouse asserts that he does not want to relocate to Ireland to reside with the applicant as he and his children would suffer extreme hardship. The applicant's spouse details that he has been residing in the United States since he was three years old and is no longer familiar with his native country. He notes that he has numerous ties in the United States, including the presence of his parents and siblings, colleagues, and his business, which he has operated for over a decade and which supports his entire family. The applicant's spouse further contends that as a result of his learning developmental issues and the problematic economy in Ireland, he would not be able to obtain gainful employment abroad. Finally, the applicant's spouse asserts that his children, most notably the eldest, born in 1999, 2002, and 2004, are fully assimilated to the U.S. lifestyle and educational system and were they to relocate to Ireland, they would experience social and academic hardship, thereby causing him hardship.

The record reflects that the applicant's U.S. citizen spouse has been residing in the United States since he was three years old. Were he to relocate to Ireland to reside with the applicant, he would

have to leave his parents and siblings, his community, his friends, his home, his business, and his clients and begin a new life in a country to which he has minimal connection. The applicant has thus established that her spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that her U.S. citizen husband would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, we find that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). This office must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse and eight children would face if the applicant were to relocate to Ireland, regardless of whether they accompanied the applicant or stayed in the United States; the applicant's community ties; support letters from friends and family members; church ties; home ownership; and the payment of taxes.

The unfavorable factors in this matter are the applicant's multiple entries to the United States by fraud or willful misrepresentation; periods of unlawful presence while in the United States and the applicant's recent arrest and related charges for retail theft, endangering welfare of children and corruption of minors.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden and the appeal will be sustained.

ORDER: The appeal is sustained.