

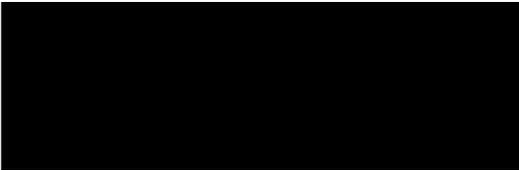
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U.S. Department of Homeland Security
Citizenship and Immigration Services
Administrative Appeals Office MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



HR *HC*

FILE:



Office: LONDON

Date:

MAY 27 2010

IN RE:



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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, London. 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 who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her lawful permanent resident husband and U.S. citizen children.

The field office director found that the applicant failed to establish extreme hardship to her husband and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director*, dated December 18, 2007.

On appeal, the applicant's husband asserts that he is experiencing emotional and financial hardship due to separation from the applicant, and that he wishes for her and their children to return to the United States. *Statement from the Applicant's Husband on Form I-290B*, dated January 14, 2008.

The record contains statements from the applicant, the applicant's husband, and the applicant's husband's former wife; copies of birth records for the applicant and her two children; a copy of the applicant's marriage certificate; a copy of the applicant's husband's permanent resident card, and; tax and employment documentation for the applicant's husband. The applicant further provides documents in a foreign language. Because the applicant failed to submit certified translations of the documents, the AAO cannot determine whether the evidence supports the applicant's claims. See 8 C.F.R. § 103.2(b)(3). Accordingly, the evidence is not probative and will not be accorded any weight in this proceeding. With the exception of the untranslated documents, the entire record was reviewed and considered in rendering this decision.

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

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [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 record reflects that the applicant entered the United States pursuant to the Visa Waiver Program on June 26, 1998, with authorization to remain until September 25, 1998. She did not depart the United States until February 2005. Accordingly, she accrued unlawful presence from September 26, 1998 until February 2005, totaling over six years. She now seeks admission as an immigrant pursuant to an approved Form I-130 relative petition filed by her husband on her behalf. She was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure. The applicant does not contest her inadmissibility on appeal.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship to a qualifying relative. These 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.

On appeal, the applicant's husband asserts that he is suffering depression and desperation due to separation from the applicant and their two children. *Statement from the Applicant's Husband on Form I-290B* at 2; *Statement from the Applicant's Husband*, dated March 12, 2007.

The applicant's husband states that he provides economic support for the applicant and his children in Ireland, and he supports himself and his daughter in the United States. *Statement from the Applicant's Husband on Form I-290B* at 2. He provides that his income is not sufficient to meet these needs, and that his financial situation is worsening. *Id.* He indicated that he works as a

mechanic and that the cost of living in New York is high. *Supplemental Statement from the Applicant's Husband*, at 2, dated October 11, 2007. He explained that he has significant financial commitments including paying child support for his daughter in the United States. *Id.*

The applicant's husband asserts that his children are U.S. citizens and that they have the right to be raised in the United States in a family environment. *Statement from the Applicant's Husband on Form I-290B* at 2.

The applicant's husband explained that he has achieved happiness residing in the United States, and that he feels that he is a part of the country. *Supplemental Statement from the Applicant's Husband* at 1. He stated that he cannot imagine residing outside the United States, and that he wishes for his children to grow up here. *Id.* He explained that he traveled to Ireland to visit the applicant and their children, but that it was difficult for him due to differences in language, food, and culture. *Id.* at 2. He asserted that he has basic English language ability. *Id.* He indicated that all of his family members reside in the United States and that they are close. *Id.* He added that his former wife and daughter would not reside outside the United States should he depart. *Id.* at 3.

The applicant stated that her and her husband's two children are residing with her in Ireland, and that the relationship between her husband and their children is suffering. *Statement from the Applicant*, dated June 19, 2007. She noted that her children's Spanish language ability is waning and thus they are having difficulty communicating with their father and other relatives. *Id.* at 1. She noted that her husband's daughter resides in New York and that she and her children are unable to see her. *Id.* She provided that she had not seen her husband in a year and that the separation is causing her and her children emotional distress. *Id.*

The applicant stated that it is not easy for her husband to come to Ireland due to the expense, language difference, and difficulty obtaining a visa. *Id.* at 1-2. She explained that she and her children are residing with her parents, yet they do not have sufficient space. *Id.* at 2. She indicated that she relies on funds that her husband sends to her in Ireland, as she cannot work full-time in her field in Ireland due to all of her work experience having occurred in the United States. *Id.* She asserted that she cannot work a minimum wage job, as she would be unable to earn sufficient income to fund childcare. *Id.*

Upon review, the applicant has not shown that her husband will endure extreme hardship should the present waiver application be denied. The applicant has not shown that her husband will suffer extreme hardship should he join her in Ireland for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act. The applicant's husband expressed that he would endure hardship should he relocate to Ireland due to the fact that English is not his native language. However, the applicant's husband provided clear statements for the record in English that show capability with the language that is sufficient for common communication and employment. The applicant has not established that her husband would face significant hardship in Ireland due to a lack of English-language proficiency.

The applicant has not established that her husband will face significant economic difficulty should he reside in Ireland. The record shows that the applicant's husband has employment in the United

States as a mechanic. The applicant has not established that her husband would be unable to continue working as a mechanic in Ireland. The applicant indicated that she relies on her husband for economic support, and that she is unable to work in her field. Yet, the applicant has not identified her field or explained why her experience in the United States cannot be utilized in the Irish job market. Nor has the applicant stated her expenses or otherwise shown what financial requirements her husband might face in Ireland. The applicant has not identified what economic obligations her husband would continue to have in the United States should he reside abroad, including the amount of child support he would need to pay for his daughter. Thus, the record does not show by a preponderance of the evidence that the applicant's husband will suffer financial challenges in Ireland that rise to an extreme level.

The applicant's husband stated that all of his family members reside in the United States and that he does not wish to be separated from them. The applicant's husband indicated that he has a daughter from a prior marriage who resides in New York, yet he did not name any other family members who live in the United States. The AAO acknowledges that the applicant's husband would likely face psychological difficulty should he reside a significant distance away from his daughter. However, he did not describe the current frequency with which he sees his daughter such that the AAO can evaluate the degree of change relocation to Ireland would create.

It is noted that, as the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for a 10-year period from the date of her last departure, she will no longer be inadmissible due to unlawful presence as of February 2015. Thus, should the applicant's husband choose to reside in Ireland for the duration of the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, his family may return to the United States together in less than five years. Thus, denial of the present waiver application does not eliminate the applicant's husband's opportunity to reside in the United States with a unified family, close to his daughter, at a future time.

Accordingly, the applicant has not distinguished her husband's emotional challenges, should he join her and their children in Ireland, from those commonly faced by individuals who reside abroad due to the inadmissibility of a spouse. Federal court and administrative decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

The record contains references to hardships experienced by the applicant's sons. Direct hardship to an applicant's children is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. However, all instances of hardship to qualifying relatives must be considered in aggregate. Hardship

to a family unit or non-qualifying family member should be considered to the extent that it has an impact on qualifying family members. The applicant's husband expressed that he wishes for his sons to reside in the United States near their family. The applicant observed that her sons are increasingly having difficulty communicating with their relatives in Spanish. However, the applicant has not shown that her children will face unusual difficulty should they remain in Ireland. The applicant has not shown that hardship her sons may experience will elevate her husband's challenges to an extreme level.

Based on the foregoing, the applicant has not shown that her husband will endure extreme hardship should he join her and their children in Ireland for the duration of her inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

The applicant has not established that her husband will suffer extreme hardship should he remain in the United States. The applicant's husband stated that he is enduring economic difficulty due to the need to support the applicant and his sons in Ireland, meeting his needs in the United States, and paying support for his daughter. Yet, the applicant has not provided an account of her husband's financial needs or submitted documentation such as evidence of his expenses. The applicant provided 2005 tax information for her husband that shows that he earned \$13,737 for that year, but the October 2007 letter from his employer does not indicate his present salary. Without adequate information and documentation, the AAO is unable to assess the applicant's husband's circumstances, or to conclude that he is facing extreme financial hardship.

The applicant's husband expressed that he is enduring significant emotional hardship due to separation from the applicant and their sons. The AAO acknowledges that the separation of spouses and children often creates significant psychological difficulty. However, the applicant has not distinguished her husband's emotional challenges from those commonly expected when spouses reside apart due to inadmissibility. As noted above, Federal court and administrative decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d at 468.

All stated element of hardship to the applicant's husband have been considered in aggregate. Based on the foregoing, the applicant has not provided sufficient explanation or evidence to show that her husband will suffer extreme hardship, whether he joins her in Ireland or remains in the United States until she is permitted to return. Thus, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to her husband, as required for a waiver under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under section 212(a)(9)(B) 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 appeal is dismissed.