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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

H6

[redacted]

DATE: APR 24 2012 Office: LONDON, ENGLAND [redacted]

IN RE: Applicant [redacted]

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:

[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.

Thank you,

for
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, London, England. 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 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 in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant's spouse is a U.S. citizen and he seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the District Director*, dated February 10, 2010.

On appeal, counsel asserts that the applicant's spouse would experience extreme hardship and that the denial had errors of fact and law. *Form I-290B*, received March 10, 2010.

The record includes, but is not limited to, counsel's brief, the applicant and his spouse's statements, statements from family members, country conditions information, medical letters, a social worker's letter, financial records and an article on fertility. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant entered the United States on the Visa Waiver Program on February 28, 2005, his authorized period of stay expired on May 29, 2005 and he departed the United States in July 2007. The applicant accrued unlawful presence from May 30, 2005, the day after his authorized period of stay expired, until July 2007, the date he departed the United States. The applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking readmission within ten years of his July 2007 departure from the United States.

Section 212(a)(9)(B) 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 [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.

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 to the applicant is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. 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).

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.

Counsel states that the applicant's spouse was born and raised in New York; the applicant's spouse's mother, father and sibling reside in the United States and she is close to her family; she has no family ties to Ireland; she is financially ruined and dependent on the applicant and her ailing parents; she has a long history of depression that had been under control, but it has re-emerged and worsened due to the applicant's inability to enter the United States; her parents and brother suffer from serious and debilitating illnesses and separation from them has exacerbated her depression; she has been forced to travel to the United States to care for her ailing family members; shortly after her relocation to Ireland, she began receiving treatment and medication for depression; she is half Panamanian and it is evident that she is a foreigner at a time of racial tension in Ireland; she has been unable to find employment since being fired in 2009; and she feels she is being overlooked for jobs due to her appearance.

The applicant's spouse states that her aunts, uncles and grandparents live in the United States; she moved to Ireland to be with the applicant; she became depressed there and felt like an outsider; she was previously diagnosed with depression in 2000; she was able to get better due to therapy and support from family; she is constantly worried about her parents' health and is upset that she is unable to care for them; her mother was diagnosed with skin cancer in 2008, she flew back to the United States to be with her and her mother started her path to recovery; her mother has had follow-up appointments every three months where precancerous cells were found; she is afraid that her cancer will return and each visit is emotionally exhausting; she is very close with her mother; she

feels guilty that she is not there to help her mother; both of her parents suffer from hypertension, heart disease and high cholesterol; her father has degenerative osteoarthritis and constant back and knee pain; she is worried that her parents are not taking care of themselves; her parents are stressed with taking care of her brother and providing financial support for her; she is very close to her brother, who has severe depression and is receiving medical treatment; she feels self-conscious in Ireland as she looks different than everyone else and has been treated like an outsider; the economy in Ireland has not gotten better since 2008; she feels prejudice in the job market; and she and the applicant rely on his parents for basic necessities. The applicant's spouse's mother and father detail their daughter's emotional difficulties, their financial support of their daughter and their family's medical issues.

The record includes evidence of U.S. citizenship for the grandparents and aunts and uncles of the applicant's spouse. The record includes medical letters reflecting that the applicant's spouse's mother had a cancerous lesion and has had regular follow-up appointments for pre-cancerous lesions; she has hypertension, high cholesterol and reflux; and she requires more personal care and assistance due to his medical issues. The record includes a medical letter for the applicant's spouse's father reflecting that he has hypertension, low back and knee pain secondary to degenerative osteoarthritis, and he requires more personal care and assistance due to his medical issues. The record includes a social worker's letter reflecting that the applicant' spouse's brother is receiving psychotherapy sessions; he is being treated by a psychiatrist and receiving medication; family support would augment his recovery; he has a close relationship with the applicant's spouse; and it would be of great benefit for him to have regular contact with her.

The record includes a counselor's letter reflecting that the applicant's spouse has been undergoing personal counseling since July 9, 2008; she was diagnosed by her general practitioner with depression and was prescribed medication; her symptoms include depressed mood, anhedonia, loss of appetite and disturbed sleep pattern; and the only thing sustaining her is that the applicant is allowed to return to the United States and the can consolidate their marital union and strive for a more secure future together. The record includes evidence that she received psychotherapy in 2000. The record includes country conditions information reflecting that discrimination against racial and ethnic minorities is a problem in Ireland, there is an increase in "Irish only" job advertisements, and job candidates with typical Irish names were more likely to be appointed than those with non-Irish names. The record includes evidence of a student loan balance of over $11,000, a credit card balance of over $7,000 and other large balances due for the applicant's spouse.

The record reflects that the applicant's spouse has spent most of her life in the United States and her family ties are there. She is currently separated from family members who have serious medical issues and she is experiencing depression. In addition, she has legitimate concerns related to discrimination and has financial issues. Based on these hardship factors, and the normal results of relocation, the AAO finds that the applicant's spouse would suffer extreme hardship upon relocating to Ireland.

Counsel states that if the applicant's spouse returns to the United States, she will be abandoning her marriage; when the applicant's spouse visits her mother she is overwhelmed by the responsibilities

and cannot turn to the applicant for emotional support; and she would be unable to deal with the pressures of dealing with her parents' deteriorating health and her brother's severe depression while enduring anguish due to separation from the applicant. The applicant and his spouse detail their closeness to each other in their statements.

The applicant's spouse states her mother was diagnosed with skin cancer in 2008, she flew back to the United States to be with her and her mother started her path to recovery; she wishes the applicant could have been there with her to provide emotional and psychological support; her mother saw how depressed she was and told her to return to Ireland; during her brief separations from the applicant, she realized how much she relies on him for emotional support; and she will need the applicant's help or she runs the risk of being overburdened and falling deeper into depression.

As mentioned above, the applicant's spouse's parents and brother have serious medical issues and the applicant's spouse has been undergoing personal counseling since July 9, 2008; she was diagnosed by her general practitioner with depression and was prescribed medication; her symptoms include depressed mood, anhedonia, loss of appetite and disturbed sleep pattern; and the only thing sustaining her is that the applicant is allowed to return to the United States and the can consolidate their marital union and strive for a more secure future together.

The applicant's spouse also states that the chances of having children if she had to wait for the applicant to return to the United States would be close to none based on her age. The record includes an article on child bearing later in life.

The record reflects that the applicant's spouse has several close family members experiencing serious medical issues and that she would not have the applicant's support while assisting her family with their issues. She currently has depression, she would experience significant emotional difficulty without the applicant and her chances of having children would decrease. Considering the hardship factors mentioned, and the normal results of separation, the AAO finds that the applicant's spouse would suffer extreme hardship if he remained in the United States.

In *Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996), the Board stated that once eligibility for a waiver is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion in favor of the waiver. Furthermore, the Board stated that:

> In evaluating whether section 212(h)(1)(B) 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).

Id. at 301.

The AAO must then, "[B]alance 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 adverse factor is the applicant's entry unlawful presence.

The favorable factors are the applicant's U.S. citizen spouse, extreme hardship to his spouse and the lack of a criminal record.

The AAO finds that the immigration violation committed by the applicant is serious in nature; nevertheless, when taken together, we find the favorable factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

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. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained and the waiver application will be approved.

ORDER: The appeal is sustained. The application is approved.