

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



U.S. Citizenship  
and Immigration  
Services

H6

[REDACTED]

DATE: DEC 20 2012

OFFICE: LONDON, ENGLAND

FILE: [REDACTED]

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

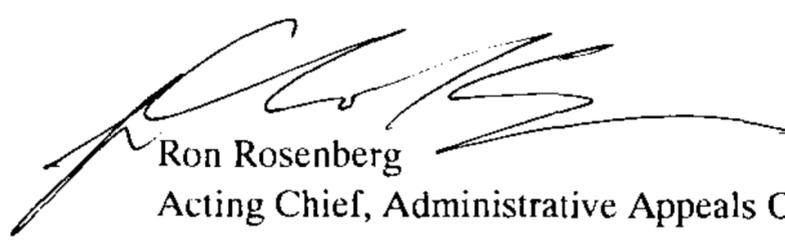
[REDACTED]

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 waiver application was denied by the District Director, London, England, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Mexico 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 again seeking admission within 10 years of the date of the applicant's departure. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act in order to return to the United States to live with his U.S. citizen spouse.

In a decision dated September 29, 2011 denying the Application for Waiver of Grounds of Inadmissibility, the District Director concluded that the applicant was inadmissible under section 212(a)(9)(B)(i)(II) of the Act and had failed to establish that the bar to admission would impose extreme hardship on his U.S. citizen spouse, the qualifying relative. *See District Director's Decision*, dated September 29, 2011.

On appeal, counsel submits Form I-290B, Notice of Appeal without additional documentation. The record also includes, but is not limited to, hardship statements from the applicant and his spouse, medical records, financial documents, and articles on cervical cancer, infertility treatments and country conditions in Ireland. The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The District Director determined that the applicant was inadmissible under section 212(a)(9) of the Act, which provides, in pertinent part that:

(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 [Secretary of Homeland Security (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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

The applicant filed a signed Form G-325A, Biographic Information, which states that he resided in the United States beginning in July 2002 until December 2007. *See Form G-325A, Biographic Information*, dated September 22, 2008. On the Form I-601, the applicant stated that he “entered the United States without a visa and lived in the United States for more than 1 year without status.” The applicant is therefore inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year, and again seeking admission within 10 years of the date of the applicant’s departure. Inadmissibility is not contested on appeal. The applicant’s qualifying relative for a waiver of this inadmissibility is his U.S. citizen spouse.

Section 212(a)(9)(B)(v) of the Act provides 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. *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 of Immigration Appeals 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 (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 record, in the aggregate, does not establish that the applicant’s spouse will suffer extreme hardship upon relocation to Mexico or Ireland.<sup>1</sup> The applicant’s spouse claims that she is unable to relocate to Mexico because of the drug violence. The record contains no documentation supporting this claim. The applicant has not established that his wife will suffer extreme hardship upon relocation to Mexico.

Regarding medical and financial hardship upon relocation to Mexico or Ireland, counsel claims that the applicant had previously submitted evidence regarding the removal of cancerous cells in his wife from [REDACTED]. See I-290B, Notice of Appeal,

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<sup>1</sup> In March 2008, the applicant and his spouse began legally residing in Ireland, from where the applicant’s spouse’s family comes. See *Forms G-325A, Biographic Information for the applicant and his spouse*, dated September 22, 2008. The applicant’s spouse is a citizen of Ireland and the applicant was able to live and work with authorization in Ireland. See *Applicant’s Hardship Statement*, dated December 22, 2009.

dated November 17, 2011. The record contains general articles on cervical cancer and the need for regular checkups but does not contain a letter from [REDACTED]. The evidence is insufficient to establish extreme hardship in that the applicant presents no medical records or letters from medical professionals discussing, for example, his spouse's previous cancer, current condition, prognosis, the need for follow-up care, and associated costs. The applicant's wife states that she is able to access medical care for cervical dysplasia, infertility and anxiety, depression and insomnia with her health insurance in the United States, but the record does not contain evidence of her health insurance coverage in the United States.

Regarding financial hardship upon relocation to Mexico or Ireland, the applicant's spouse further states that her parents provide financial support to the applicant and her in the form of free rent, personal loans and tuition assistance for the applicant's wife and that this financial support is needed so that the applicant and his wife can repay their debts. The record does not establish that this support is being provided or that this support is necessary since the applicant did not submit evidence of total income and total expenses for the applicant and his wife.

Regarding medical and financial hardship upon relocation to Ireland, the applicant's spouse states that while it was easy to find employment in Ireland in 2008, it is no longer easy to find employment. The record contains one list of available jobs in Wexford and an article indicating a rate of unemployment of 13.7 percent in Ireland, but the record lacks evidence of the applicant's and his spouse's employment, and income (or lack thereof) and expenses in Ireland. The record also indicates that the applicant's spouse was ineligible for Irish government benefits, which require two years of habitual residency. The applicant's spouse states that she would have to pay for medical services but no evidence is included in the record documenting her requisite medical treatment and her inability to pay for such care.

Regarding emotional hardship upon relocation to Mexico or Ireland, counsel states that the applicant previously submitted evidence that his spouse's mother was recently treated for cancer. *Id.* The applicant's spouse states that she is an only child and that her mother is reliant on her to provide emotional support while her mother has breast cancer. The applicant's spouse further claims that her parents provide her psychological and emotional support while she is dealing with her own health problems. While the record contains a health insurance benefits document indicating that the mother of the applicant's spouse received medical treatment described as "excision of cyst; fibroadenomaor" in July 2010, the applicant presents no recent medical records or letters from medical professionals discussing the medical condition of his spouse's mother. The record also does not indicate that the applicant's spouse's support is necessary or that no other family member is able to support the applicant's spouse's mother.

The record lacks sufficient evidence demonstrating that the medical, financial, emotional or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, such that the applicant's spouse would experience extreme hardship if the waiver application is denied and she relocates to Mexico or Ireland to reside with the applicant.

The record, in the aggregate, also does not establish that the applicant's spouse will suffer extreme hardship upon separation from the applicant. Regarding emotional and medical hardship, the applicant's wife states that she is suffering from anxiety and depression since she is separated from her husband and dealing with infertility and female health problems with only the support of her parents. She is unable to concentrate on work or school due to separation from the applicant. She further states that even though she is taking medication to help her with her nerves, she still wakes in the middle of night because she is worried about finances and misses her husband. Counsel referred the applicant's spouse to a psychologist who diagnosed her with depression secondary to the difficulties she and her husband are encountering in trying to resolve his immigration status. Letter by [REDACTED] dated September 21, 2009. The record also contains medical documents from the [REDACTED] regarding the applicant's spouse's depression, anxiety and dysmenorrhea, which show that the applicant's spouse was given a one-month prescription for anti-anxiety medication on October 26, 2009 and was referred to [REDACTED]. On appeal, the applicant submits no new information regarding his wife's mental or physical health treatment and prognosis or follow-up counseling. The record lacks sufficient evidence demonstrating that the emotional, medical, or other impacts of separation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, such that the applicant's wife would experience extreme hardship if the waiver application is denied and she remains separated from the applicant.

The applicant has failed to establish extreme hardship to his U.S. citizen spouse, as required under section 212(a)(9)(B)(v) 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 a waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) 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.