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



DATE: JAN 02 2013

Office: CHICAGO, IL

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to 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.

Thank you,

[Handwritten signature]

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Chicago, Illinois, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native 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 10 years of her last departure from the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The Director concluded that the applicant had failed to demonstrate extreme hardship to her U.S. citizen spouse and denied the application accordingly. *See Decision of Acting Field Office Director*, dated September 22, 2011.

On appeal, counsel for the applicant states that the Director misapplied the law and did not properly consider the evidence regarding the extreme hardship the qualifying spouse would suffer if the waiver application were denied. *See Counsel's Brief*.

The documentation in the record includes, but is not limited to: counsel's brief; a statement from the qualifying spouse; a mental health evaluation regarding the qualifying spouse; and financial records. The entire record was reviewed and considered in rendering a decision on the appeal.

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 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 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 Attorney General regarding a waiver under this clause.

In the present case, the record reflects that the applicant entered the United States in 2000 and remained until January 2006. She reentered the United States as a visitor on June 5, 2006 and has remained in the country since that date. Therefore, the applicant accrued one year or more of unlawful presence and is inadmissible under section 212(a)(9)(B)(i) of the Act for a period of 10 years from her departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under section 212(a)(9)(B)(v) of the Act as the spouse of a U.S. citizen. In order to qualify for this waiver, however, she must first prove that the refusal of her admission to the United States would result in extreme hardship to her qualifying relative. Hardship to the applicant or the applicant's U.S. citizen child is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's spouse. 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 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. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or U.S. 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. INS*, 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.

On appeal, counsel asserts that the qualifying spouse would suffer extreme hardship if the inadmissibility waiver were denied. He claims that the qualifying spouse has a history of depression which would worsen if he were separated from his wife and infant U.S. citizen daughter. Counsel also claims that adjustment to life in Ireland and separation from his family in the United States would negatively affect the qualifying spouse’s depression. Finally, counsel states that the qualifying spouse would experience financial difficulties on separation from the applicant or on relocation to Ireland.

The qualifying spouse indicates in his statement that he has struggled with depression for many years but that the presence of his wife and daughter in his life have helped to improve his mental health. He believes that his depression would worsen in the applicant’s absence. The qualifying spouse also worries that he would be emotionally and financially unable to provide proper care for his infant daughter on his own. He expresses particular concern about maintaining the health of his daughter, who had a low birth weight and therefore must visit the hospital frequently.

A mental health assessment in the record confirms that the qualifying spouse has a “long history of depression” which has limited his ability to work and to maintain relationships. *Mental Health*

Evaluation, [REDACTED] L.C.P.C., dated July 7, 2011. He has struggled to complete his education and to maintain employment. He works as a server in a restaurant and although the applicant helped him get a job as a manager, he was "unable to handle the position." *Id.* According to the assessment, the applicant has been very important in the management of the qualifying spouse's mental health, improving his ability to cope. The qualifying spouse depends heavily on the applicant for assistance in setting and meeting goals, expressing himself, and succeeding in daily life. Separation from her would therefore be "devastating" for him. *Id.* Due to his depression, separation from the applicant or relocation to Ireland "would present an additional layer of losses that would be insurmountable for him." *Id.* Furthermore, the assessment indicates that the qualifying spouse is currently pursuing education and employment that would allow him to better provide for his family, but those efforts would be disrupted if he lacked the assistance and support of the applicant in the United States or had to relocate to Ireland. This would trigger the qualifying applicant's coping mechanism of "emotional and social withdrawal" and he would "slip into a deeper depression." *Id.*

The AAO finds that the qualifying spouse would suffer extreme hardship on separation from the applicant if the waiver application were denied. The evidence indicates that the qualifying spouse depends on the applicant in order to function on a daily basis. The mental health assessment establishes that his depression would become so severe in the applicant's absence that it would interfere with his ability to work, complete his education, maintain relationships, and care for himself and his infant daughter, thus reaching the level of extreme hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565.

The AAO also finds that the qualifying spouse would suffer extreme hardship upon relocation to Ireland. As discussed *supra*, the mental health assessment indicates that the qualifying spouse's depression would worsen significantly if he were to relocate because he would lose the employment and educational opportunities he has in the United States. Additionally, he may have difficulty finding adequate work to support his family in Ireland due to his limited set of skills and his difficulty maintaining employment. *Mental Health Evaluation*. Furthermore, the qualifying spouse would be separated from his siblings and mother in the United States and would be forced to relocate from his country of birth. The assessment indicates that he would likely be unable "to psychologically manage the transition of his family and himself to a foreign country with his current depression." *Id.* Considered in the aggregate, the qualifying spouse's severe depression, his limited work experience and difficulty maintaining employment, and his close family ties and lifelong residence in the United States would create extreme hardship for him if he were to relocate to Ireland. *See Matter of O-J-O-*, 21 I&N Dec. at 383. The AAO therefore finds that the applicant has established extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act.

In that the applicant has established that the bars to her admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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).

Matter of Mendez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO 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 case include the applicant's U.S. citizen spouse, the extreme hardship the qualifying spouse would suffer if the applicant's waiver application were denied, and the fact that the applicant has an infant U.S. citizen daughter. The unfavorable factor is the applicant's unlawful presence in the United States.

Although the applicant's violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factor. In these proceedings, 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.