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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

DATE: JAN 08 2013

OFFICE: LONDON

FILE: [REDACTED]

IN RE: [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:

SELF-REPRESENTED

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 with the field office or service center that originally decided your case by filing a 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

A handwritten signature in black ink, appearing to read "R. Rosenberg", written over the typed name and title.

DISCUSSION: The waiver application was denied by the District Director, Rome, Italy. The application 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 in the United States for one year or more and seeking readmission within 10 years of departure from the United States. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf by her U.S. citizen spouse. The applicant seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

In a decision dated February 28, 2012, the District Director concluded that the applicant did not establish that her qualifying relative would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly.

On appeal, the applicant states that her spouse will in fact suffer from extreme hardship as a result of her inadmissibility.

In support of the waiver application, the record includes, but is not limited to letters from the applicant, a letter from the applicant's spouse, letters from friends of the applicant and her spouse, two letters from doctors regarding the applicant's spouse, a lease document for the applicant and her spouse, biographical information relating to the applicant and her spouse, and documentation of the applicant's immigration history.

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 applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for one year or more. Section 212(a)(9) of the Act 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 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.

The record indicates that the applicant was admitted to the United States on a visitor's visa with authorization to remain no later than December 2002, however, the applicant remained in the United States until October 24, 2010. As the period of unlawful presence accrued is one year or more, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from her departure from the United States. She does not contest this ground of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of inadmissibility pursuant to 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 will not be separately considered, except as it is shown to affect 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-Moralez*, 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 deportation, 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, 885 (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 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, the applicant states that she questions the District Director’s decision because of apparent typographical errors in the record. She also states that the record demonstrates that her U.S. citizen husband will suffer extreme hardship as a result of her inadmissibility. The AAO notes the District Director’s typographical error in their decision and does not find that the phrase in question which stated “if your spouse and two daughters decide to live in the United States without you, their situation is typical to individual separated as a result of deportation and exclusion,” was substantive to the District Director’s analysis of the documentation of record or to the outcome of the decision. The record indicates that the applicant, age 42, and her spouse, age 66, have been married since July 24, 1997 and do not have any children. The District Director listed in error that the applicant and her spouse had two daughters. However, that issue did influence the outcome of the decision. The record indicates that the applicant’s spouse is a native of the United Kingdom and became a naturalized citizen of the United States on August 28, 2009. The applicant states that her husband will suffer from emotional, financial, and medical hardship as a result of their separation. Letters of support from friends of the applicant and her husband support the applicant’s statement that she and her husband had a close relationship and that the applicant’s husband had been suffering emotional hardship as a result of being separated from the

applicant. Those letters were dated from October 2010 to January 2011. The AAO notes that one letter is dated January 2010, however, since the applicant had not yet departed the United States at that time, the date appears to be in error. Additionally, in regards to the applicant's spouse's emotional health, a letter from Dr. [REDACTED] M.D. of Brea, California, dated October 27, 2011, stated that the doctor consulted with the applicant's husband, and that he reported suffering "panic attacks, general anxiety, nose bleeds, weight loss, and loss of concentration, headache, insomnia, and fatigue." Dr. [REDACTED] indicated that he initiated therapy for the applicant's spouse's "panic, depression, and anxiety disorder." He also states that the applicant's spouse's mental health issues "are adversely affecting his physical health and this deterioration appears to be solely due to the delay in processing his wife's visa application." Dr. [REDACTED] however, does not mention that he diagnosed the applicant's spouse with any physical medical problems. The AAO notes Dr. [REDACTED] prescribed the applicant's spouse Zoloft on October 25, 2011, however, at the time of the appeal there was no indication regarding the results of the applicant's therapy and medication regimen. Additionally, in an undated letter in the record the applicant's spouse states that he has had to visit the emergency room for high blood pressure and hyperventilation. He also states that he was told his blood pressure was high. There is no support for these assertions in the record. Although the applicant's spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant's spouse also states that he is suffering from financial hardship and the applicant reports on appeal that as a result of her husband's financial hardship, he must reside with friends and cannot afford health insurance. Again, there is no support for these statements in the record. There is no documentation of the applicant's spouse's income or expenses. The applicant reported on appeal that her expenses total \$375.00 per month and that she is unemployed. There is no indication, however, that the applicant's spouse is suffering financial hardship as a result of the applicant's situation. The record contains two bank statements that do not contain any identifying information. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158 at 165. The AAO recognizes the impact of separation on families, but the evidence in the record, when considered in the aggregate, does not indicate that the hardship in this case is extreme. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Neither the applicant nor her spouse state what hardship the applicant's spouse would suffer if he were to relocate to Ireland to reside with the applicant. The AAO also notes that although the applicant's spouse mentions having certain health conditions, there is no support for those statements in the record aside from the letters mentioned above concerning the applicant's spouse's emotional health as result of separation from the applicant. It does not translate that the applicant's spouse would also suffer emotionally if he were to relocate to reside with the applicant

abroad. The AAO notes that significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that the applicant's spouse suffers from such a condition. The applicant is a native of the United Kingdom and there is no indication why he could not reside there or in Ireland with the applicant. Moreover, there is no documentation of the applicant's spouse's ties to the United States, including familial, financial, or property ties. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158 at 165. Based on the information provided, considered in the aggregate, the evidence does not illustrate that the hardship suffered in this case, should the applicant's spouse relocate to Ireland, would be beyond what is normally experienced by families dealing with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

Although the applicant's spouse's concern over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v), of the Act, be above and beyond the normal, expected hardship involved in such cases.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative 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 she merits a waiver as a matter of discretion.

In proceedings for an application for 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.