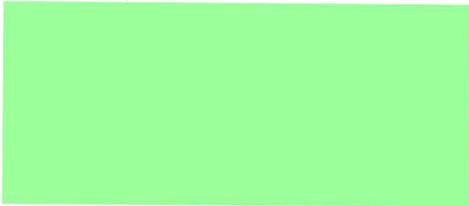


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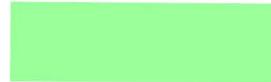
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., NW, MS 2090
Washington, DC 20529-2090

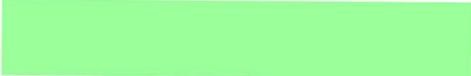


U.S. Citizenship
and Immigration
Services



DATE: **JAN 29 2013** OFFICE: LONDON, U.K.



IN RE: 

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(9)(B)(v)

ON BEHALF OF APPLICANT:



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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the District Director, London, United Kingdom, and 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, United Kingdom, 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 remaining in the United States unlawfully for more than a year and seeking admission within ten years of his departure from the country. The applicant is married to a U.S. citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. citizen wife and children.

In a decision dated March 15, 2012, the director determined the applicant had failed to establish that his U.S. citizen spouse would experience extreme hardship if he were denied admission into the United States. The Form I-601 waiver application was denied accordingly.¹

Counsel asserts on appeal that the director incorrectly applied extreme hardship standards in the applicant's case, and that evidence establishes the applicant's wife would experience extreme emotional, physical, financial, and professional hardship if the applicant is denied admission into the United States. In support of these assertions counsel submits letters from the applicant's wife; psychological and medical evidence; financial documents; academic information; identity and birth documents for the applicant, his wife, and their children; and country-conditions reports.

The record also includes letters from the applicant and his mother-in-law, documents establishing identity and relationships, and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(i) [A]ny 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.

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

Waiver.-The Attorney General [now Secretary, Department 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

¹ A previously filed Form I-601 was denied by the District Director, Bangkok, Thailand on November 19, 2008. The decision was not appealed.

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.

The record reflects that the applicant was admitted into the United States on June 2, 2001 pursuant to the visa waiver program. He was authorized to remain in the country until August 31, 2001; however, he did not depart the United States until March 26, 2003. The applicant was again admitted into the United States pursuant to the visa waiver program on April 24, 2003 with authorization to remain in the country until July 23, 2003; however, he remained in the country until May 13, 2006.

Inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, which is triggered upon departure, remains in force until the alien has been absent from the United States for ten years. Here, the applicant was unlawfully present in the United States for over one year and he has remained outside of the country for less than ten years. He is inadmissible under section 212(a)(9)(B)(i)(II) of the Act until May 14, 2016. Counsel does not contest the applicant's inadmissibility under section 212(a)(9)(B)(i)(II) of the Act.

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-Morales*, 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*, 22 I.&N. Dec. 560, 565 (BIA 1999), 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. 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, supra*

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, 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.

The applicant’s U.S. citizen spouse is his qualifying relative under section 212(a)(9)(B)(v) of the Act. The applicant refers to hardship their U.S. citizen children would experience if the waiver application is denied. It is noted, however, that Congress did not include hardship to an alien’s child as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. Hardship to the applicant’s children will therefore not be considered, except as it may affect the applicant’s qualifying family member.

The applicant’s wife states that she has serious physical and emotional health concerns that require her to remain in the United States for monitoring and treatment. She has been prescribed anxiety medication due to her separation from the applicant, and she is unable to seek employment due to health concerns, her need to care for their children, and resulting panic attacks. She lost her condominium to foreclosure, she filed for bankruptcy, and she is dependent on government health care and food stamp assistance. It is expensive to visit the applicant in Ireland. Also, their son develops ear infections and fevers when they fly to Ireland, he does not receive the medical care he needs there, and she is also unable to receive consistent and quality medical care for her health conditions in Ireland. She states there are limited job opportunities in Ireland, the applicant has only found part-time work, and she would be unable to work there until she became a legal resident. In addition, schools in her hometown are superior to those in Ireland, and she wants their children to

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attend school in the United States. She also plans to pursue a nursing degree, which she would be unable to do in Ireland.

The applicant's attorney adds, in a brief submitted on appeal, that the applicant works part-time in Ireland while he pursues computer programming studies and that the applicant's wife has been employed full-time in the United States since May 2012.

According to psychological assessments in the record, the applicant's wife was diagnosed with anxiety disorder, adjustment disorder and panic disorder due to her pregnancy and separation from the applicant, and she was prescribed medication for her conditions. Medical records from 2009 reflect the applicant's wife received treatment for depression and anxiety, and that she was also diagnosed with and treated for hypothyroidism and tumid lupus.

Financial evidence reflects the applicant's wife filed for bankruptcy in March 2010 and that her condominium was foreclosed on in March 2007. Evidence additionally reflects that between November 2008 and December 2009, the applicant's wife received food stamps and health care assistance through the Massachusetts Transitional Assistance Benefits program.

Upon review, the AAO finds that the evidence in the record establishes the hardships faced by the applicant's wife, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship, if she remains in the United States separated from the applicant. The applicant's wife has been diagnosed with anxiety, adjustment and panic disorders due to her separation from the applicant, and she has been prescribed medication for her conditions. The applicant's wife has also been diagnosed with hypothyroidism and tumid lupus, for which she has required treatment. In addition, the applicant's wife has experienced serious financial hardship, including the loss of her home and bankruptcy, since her husband's departure from the United States. The combined evidence establishes she is experiencing hardship beyond that normally experienced upon removal or inadmissibility as a result of her separation from the applicant.

The AAO finds, however, that the evidence in the record, when considered in the aggregate, fails to establish the applicant's wife would experience hardship that rises beyond the common results of removal or inadmissibility if the applicant were denied admission and she relocated with their family to Ireland. The evidence in the record fails to corroborate assertions that the applicant's wife and family receive substandard medical care in Ireland. The record also lacks evidence to corroborate assertions that the applicant's wife would be unable to reside and work legally in Ireland. Moreover, although country-conditions information reflects high unemployment in Ireland, the reports are general in nature and the record lacks evidence establishing the applicant has been unable to obtain employment. The evidence also fails to establish that the applicant's wife's family members in the United States would be unable to visit her in Ireland. Additionally, no evidence establishes that education is substandard in Ireland or that the applicant's wife would experience extreme hardship if their children studied in Ireland until the applicant is eligible to immigrate.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. As the applicant has not demonstrated extreme hardship upon relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Furthermore, because the applicant has not established extreme hardship to a qualifying family member upon relocation, no purpose would be served in determining whether the applicant 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. *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.