



**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **MAR 20 2013** OFFICE: PHILADELPHIA, PENNSYLVANIA

File:

IN RE: Applicant:

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:



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 Field Office Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of The United Kingdom of Great Britain and Northern Ireland (Northern 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 admission within 10 years of his last departure from the United States. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest this finding of inadmissibility. Rather, 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 with his wife in the United States.

The Field Office Director concluded the applicant failed to establish extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated March 29, 2012.

On appeal, counsel asserts the U.S. Citizenship and Immigration Services (USCIS) failed to consider all of the relevant factors, in the aggregate, in determining extreme hardship to the applicant's U.S. citizen spouse. Counsel also asserts USCIS should grant the applicant's waiver application upon balancing the social and humane considerations against his unlawful presence, and reopen his adjustment application and grant him lawful permanent resident status. *See Form I-290B, Notice of Appeal or Motion*, dated April 24, 2012.

The record includes, but is not limited to: briefs and correspondence from counsel; letters of support; identity, psychological, medical, employment, and financial documents; photographs; criminal documents; and documents on conditions in Northern Ireland. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, in relevant 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 Attorney General [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 Attorney General [Secretary] regarding a waiver under this clause.

The record reflects the applicant was admitted to the United States under the Visa Waiver program by presenting his Northern Ireland passport on November 17, 1998, not to exceed April 16, 1999. However, the applicant remained in the United States until he voluntarily departed on September 17, 2003. The record reflects he subsequently was admitted under the Visa Waiver program on November 1, 2003, and has remained to date. The applicant accrued unlawful presence from April 17, 1999 until September 17, 2003;¹ a period in excess of one year. As the applicant is seeking admission within 10 years of departure, he is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his in-laws can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only demonstrated qualifying relative in this case. 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 BIA 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 BIA 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.

¹ The AAO notes the Field Office Director erroneously indicated the applicant's unlawful presence commenced on April 16, 1999, but finds this incorrect date to be harmless error.

The BIA 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; *In re 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 BIA 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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In re 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.

Counsel contends the applicant's spouse would suffer extreme emotional and financial hardship in the applicant's absence as: she and the applicant have been together for four years and have created a life together; she has been experiencing severe psychological symptoms associated with the applicant's potential removal from the United States that could result in further psychological decompensation; she has been evaluated and recommended for counseling and biofeedback as well as prescribed medications due to her current mental health-related symptoms; she needs the applicant's income to meet her essential, monthly expenses, and the applicant would be unable to contribute to their household expenses if he were in Northern Ireland; and her parents rely on her and the applicant for emotional support and to assist them with their everyday routines including

household chores and taking her mother to appointments due to their medical conditions. The applicant also discusses: his courtship with his spouse and his feelings for her; his spouse's inability to live by herself as they have been together for so long and do everything together; his spouse's feelings of comfort, confidence, encouragement, and relaxation when she is around him as he is her "rock"; her stress as she would be worried about her financial situation, their unfinished house, and the care of her mother and their pets; the loss of her confidence as she would lose their house and have to sell her car; the work and repairs he has performed and still needs to do to their house as it was in foreclosure; the assistance he provides to his mother-in-law at least once every other week as he and his spouse have been her primary caregivers since she was classified as disabled; the emotional and physical pain his father-in-law would have to endure to assist his spouse with the sale of their home; and he would be unemployed for an indefinite time in Northern Ireland as his field of carpentry is almost nonexistent and the economy is the worst it has been in decades. The applicant's spouse further discusses: her feelings for the applicant and the ways in which they are "a team" and complement one another; their dreams to have children; the support he has provided to her in her efforts to obtain her "dream job"; and that the renovations are about 60% complete on their house and she lacks the ability to hire a crew to complete the work in the applicant's absence.

The record is sufficient to establish the applicant's spouse has been diagnosed by [REDACTED] and [REDACTED] with Adjustment Disorder with Anxiety and has been recommended for various treatments including prescriptive medication, individual counseling, and biofeedback. See *Psychological Evaluation*, dated April 19, 2012; see also *Psychological Letter*, dated April 23, 2012. While the AAO acknowledges the findings made in the applicant's spouse's psychological evaluations, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by family members of inadmissible individuals.

Additionally, the record is sufficient to establish the applicant is currently employed by [REDACTED] earning \$22/hour, and his spouse is employed by [REDACTED] in the capacity of a Graphic Designer, earning an annual salary of \$48,000. The record also includes some evidence of their monthly financial obligations including billing statements, a self-reported budget sheet, and a letter submitted by [REDACTED]. See *Accountant's Letter*, dated April 18, 2012. While the AAO acknowledges the applicant's spouse may experience some economic hardship in the applicant's absence, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by family members of inadmissible individuals. [REDACTED] letter does not include a discussion concerning the capacity in which he acquired his knowledge of the applicant and his spouse's monthly expenses as the most recent income tax return in the record is from 2010 and "self-prepared". And, the record includes evidence the unemployment rate in Northern Ireland has reached its highest level in 13 years. See *Internet articles*. The record also includes a statement submitted by [REDACTED] a public official in County Armagh, Northern Ireland,² indicating the unemployment rate in Northern Ireland has reached 7.2%, which includes individuals in the construction industry. See *Letter from [REDACTED]*, dated April 16, 2012. However, the AAO notes [REDACTED]'s letter

² The AAO notes information readily accessible to the public via the Internet indicates Councillor [REDACTED] was appointed to serve in the capacity of [REDACTED] on June 25, 2012. See [http://www.\[REDACTED\]](http://www.[REDACTED]) [last accessed on March 5, 2013].

does not include a discussion concerning the capacity in which she acquired her knowledge of the applicant and his spouse's particular circumstances other than generally referencing that the applicant "comes from a well[-]known family who [is] well respected". *Id.* Moreover, the record does not include any discussion of the housing market in Northern Ireland and its affordability. The AAO is thus unable to conclude the record establishes the applicant's spouse's financial hardship would go beyond that which is commonly expected.

Further, the record is sufficient to establish the applicant's mother-in-law has received social security-related disability benefits since December 2010, and the applicant assists her about every two weeks with various activities. The record is sufficient to establish he also has assisted his father-in-law with various activities. However, the AAO notes that although the applicant has provided assistance to his in-laws, the record does not include any discussion from the applicant's in-laws' treating physicians, indicating their courses of treatment for their various medical conditions and their inability to function in the applicant's absence. Absent an explanation in plain language from the treating physicians of the current nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of medical conditions or the treatments needed.

The AAO notes the concerns regarding the hardship the applicant's spouse and in-laws may experience in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Counsel contends the applicant's spouse would suffer extreme hardship upon relocating to Northern Ireland to be with the applicant as: she is particularly close to her mother and father who have relied on her and the applicant, and she is in anguish at the thought of leaving them when they need her assistance; and it would be personally and professionally detrimental to her to give-up her "dream job" for which she has worked so hard to obtain. The applicant further discusses: his spouse would be forced to survive without her family and the uncertainty of when she would see them again; his wife has never been away from her family for a long length of time, and she has always lived in the United States with easy accessibility to her family; his spouse would find it difficult to adapt to life in Northern Ireland, where it would be next to impossible for her to find employment; she would be completely depressed and heartbroken to give-up her employment at [REDACTED] and they have created a life in the United States, where they have good friends surrounding them. The applicant's spouse also discusses: her mother has come to rely on her and the applicant because of her medical condition; she gets "sick to her stomach" with the thought of having to resign from the job for which she has anticipated for so long and has excitedly accepted; and she does not know where to begin starting her new life in Northern Ireland.

Although the applicant's spouse may experience hardship upon relocating to Northern Ireland with the applicant, the AAO finds the record does not establish the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. Although the record reflects the applicant's spouse has a close relationship with her parents and assists them with their activities, the AAO notes the record does not include any evidence from the applicant's spouse's

parents' treating physicians or a discussion of their inability to function in the applicant's spouse's absence. Additionally, [REDACTED] evaluation does not include any specific discussion of the effect the applicant's spouse's relocation to Northern Ireland would have on her upon leaving her parents. Rather, the evaluation only includes a general statement she is "very terrified by [the] thought of leaving [the] country". See *Psychological Evaluation, supra*. Additionally, [REDACTED] letter does not include any discussion of the effect the applicant's spouse's relocation would have on her mental health. See *Psychological Letter, supra*. The AAO also notes the record does not include any evidence of labor or employment opportunities for Graphic Designers in Northern Ireland. Moreover, Northern Ireland is English-speaking so the applicant's spouse should have reduced difficulty acclimating to its social system. And, in its latest travel advisory, the U.S. Department of State indicates: "The United Kingdom is politically stable and has a modern infrastructure, but shares with the rest of the world an increased threat of terrorist incidents of international origin, as well as the potential for isolated violence related to the political situation in Northern Ireland. Like the United States, the United Kingdom shares its national threat levels with the general public to keep everyone informed and explain the context for the various increased security measures that may be encountered." *Travel Advisory, The United Kingdom of Great Britain and Northern Ireland*, issued October 26, 2012. The AAO is thus unable to conclude that the applicant's spouse's hardship would go beyond that which is commonly expected.

The AAO notes the concerns regarding the hardship the applicant's spouse may experience upon relocation to Northern Ireland to be with the applicant, but finds that even when this hardship is considered in the aggregate, the record fails to establish the applicant's spouse would suffer extreme hardship as a result of relocation.

In this case, the record does not contain sufficient evidence to show the hardship faced by the qualifying relative, considered in the aggregate, rises beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds 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 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.