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

U.S. Citizenship and Immigration Services

#5

[redacted]

DATE: OCT 1 0 2012 OFFICE: ST. PAUL FILE: [redacted]

IN RE: Applicant: [redacted]

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

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, St. Paul, Minnesota, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Tunisia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring or seeking to procure U.S. admission through fraud or misrepresentation, and section 212(a)(9)(B)(i)(II) of 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. The applicant is married to a U.S. citizen and the beneficiary of an Approved Petition for Alien Relative (Form I-130). The applicant does not contest the inadmissibility finding, but seeks a waiver pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to remain in the United States with his wife.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director,* December 6, 2010.

In support of the appeal, the applicant's counsel submits a brief contending USCIS misapplied the legal standard for extreme hardship, together with country condition information. The record also contains documentation submitted with an Application to Adjust Status or Register Permanent Residence (Form I-485) and with the Form I-601, including, but not limited to: marriage and birth certificates; hardship statements and supporting statements; financial information, such as tax returns, bills for mortgage, auto insurance, and utilities; and country condition information. The entire record was reviewed and considered in rendering this decision.

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

> (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
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> . . . .
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> (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.
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> . . . .
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> (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. . . .

The record reflects that the applicant used a B2 visa to enter the United States on July 25, 2000, was granted admission until January 24, 2001, and failed to depart timely, extend, or change his status. The field office director found that his departure on March 9, 2010, after accruing unlawful presence since January 24, 2001, made him inadmissible under section 212(a)(9)(B)(i)(II) of the Act. The applicant was paroled into the United States on April 7, 2010, pursuant to a grant of advance parole issued on March 8, 2010, to pursue a pending adjustment of status application.[1]

In *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), the Board of Immigration Appeals (BIA) held that an alien who leaves the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act does not make a departure from the United States within the meaning of section 212(a)(9)(B)(i)(II) of the Act. Here, the applicant obtained advance parole under section 212(d)(5)(A) of the Act, temporarily left the United States pursuant to that grant of advance parole, and was paroled into the United States to pursue a pending application for permanent residence. In accordance with the BIA's decision in *Matter of Arrabally,* the applicant did not make a departure from the United States for the purposes of section 212(a)(9)(B)(i)(II) of the Act. Accordingly, the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

> Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i)(1) of the Act provides:

> The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien [...].

A waiver of inadmissibility under section 212(i) 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse is the only 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-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

[1] The AAO notes that this application was not denied until December 6, 2010.

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 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*, 138 F.3d at 1293 (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 shows that the applicant procured the B2 visa he used to enter the United States in July 2000 through fraud or misrepresentation by telling the issuing consular officer he was planning a three-week visit as a member of a tour group and receiving a visa annotated to reflect this information. The applicant admitted during his February 2, 2009 adjustment interview and confirmed on his waiver application dated April 27, 2010 that he was never a tour group participant, nor did he intend to depart after a short visit. Rather, he states it was always his plan to stay in the United States permanently.

The applicant's wife contends she will suffer emotional and financial hardship if she remains in the United States while the applicant resides abroad due to his inadmissibility. The record, however, contains insufficient evidence to establish these claims.

To begin, the record contains little documentation concerning the emotional hardship that counsel and the applicant's wife state she will experience if separated from her husband, other than her own claims and statements from other interested parties. The qualifying relative asserts she would find it devastating if the applicant is not granted a waiver, and claims to have been stressed out and depressed when he returned to Tunisia for a month to visit his ailing father. The record shows that she was worried the applicant might be refused reentry to this country despite having obtained advance parole. Letters of support from her parents, adult sons, brother, friend, and pastor confirm that she missed her husband. There is no evidence substantiating the claim that her job performance was affected. The record lacks any assessment of the long term impact on the applicant's wife of her husband's absence and contains insufficient evidence to support her claim that his departure would cause emotional hardship beyond the common results of removal or inadmissibility. Further, there is no evidence she would be unable to visit her husband outside the United States to ease the pain of separation, and the AAO notes that she has an extensive network of family- and community-based support to mitigate the pain of loss.

As for the predicted financial hardship, despite the qualifying relative's statement that the applicant helps her pay bills, there is no evidence that he contributed earnings to the household. Although the record contains the applicant's listing of a job on a biographical form and a tax return, there is no mention of any wage or salary. The record show the qualifying relative to be the couple's primary wage earner. Tax returns indicate only the qualifying relative as a filer until 2008, when the couple submitted a joint return. Documentation establishes that the applicant's spouse's income ranged from about $32,500 to nearly $36,000 from 2005 to 2007. In 2008, the couple jointly reported income of nearly $37,500, but the record contains a W-2 wage statement only from the qualifying relative showing that at least $33,500 of the total were hers. There are no W-2s, pay stubs, or other evidence that the applicant contributed income to the household. Therefore, the record does not support the assertion that the applicant contributes financially to the relationship, or that without his

physical presence in the United States his wife will experience financial hardship. Nor has it been established that the applicant will be unable to support himself outside the United States and require the financial support of his wife.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. The situation of the applicant's wife, if she remains in the United States, is typical of individuals facing separation as a result of removal and does not rise to the level of extreme hardship based on the record. Based on the evidence provided, the applicant has not met his burden of establishing a qualifying relative would suffer hardship beyond the common results of removal or inadmissibility if he is unable to remain here.

As regards establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the AAO notes that the record contains limited information of what awaits the applicant in Tunisia, other than his statement regarding probable residence on the family farm. Official U.S. government reporting establishes that moving there to live with her husband would expose the qualifying relative to significant risk of harm, as the U.S. Department of State (DOS) issued a Travel Warning on September 15, 2012 following an attack on Embassy in Tunis advising U.S. citizens against traveling to the country and encouraging those already there to depart. The record indicates that she has never traveled outside the United States, lacks any ties to Tunisia besides her husband, and understands neither French nor Arabic, the two prevalent languages. Country condition information substantiates that cultural differences would limit her freedom of movement, ability to practice her Christian faith, and chance of integrating into the society. Supporting the applicant's contention regarding his wife's poor job prospects there, counsel documents the high unemployment rate in Tunisia. Although mere diminution in earnings or the inconvenience of needing to pursue new employment does not constitute hardship that rises to the level of "extreme," documentation establishes that the applicant's wife would be unable to join the workforce to earn income, which would interfere with her ability to pay her U.S. mortgage and place her home ownership at risk.

The record reflects that the cumulative effect of the applicant's wife's extensive ties to the United States and absence of ties to her husband's country, her lifelong residence in the United States, the personal security issues, religious, and gender discrimination she would face, and her loss of employment, were she to relocate, rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, a qualifying relative would suffer extreme hardship were she to relocate to Tunisia to reside with her husband.

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. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated

extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In proceedings for application for waiver of grounds of inadmissibility, 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. The waiver application is denied.