



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

(b)(6)

[Redacted]

DATE: **MAR 21 2013**

OFFICE: ORLANDO, FLORIDA

File: [Redacted]

IN RE:

Applicant: [Redacted]

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

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 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

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

The applicant is a native and citizen of Tunisia who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime involving a controlled substance. The applicant seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility accordingly. *See Decision of the Field Office Director*, dated September 8, 2011. The field office director further found that the applicant's negative factors outweigh the positive and preclude a favorable exercise of discretion. *Id.*

On appeal, counsel contends that if a waiver is not granted the applicant's spouse will suffer extreme hardship and that the applicant merits a favorable exercise of discretion. *See Form I-290B, Notice of Appeal or Motion, received October 12, 2011.*

The record contains, but is not limited to: Form I-290B and counsel's statement thereon; various immigration applications and petitions; hardship letters; letters from the applicant's spouse's daughters; medical records and related internet article printouts; income tax returns and business-related records; country conditions reports for Tunisia; a statement from the applicant concerning his arrest for assault with a deadly weapon; and documents related to the applicant's criminal record and numerous traffic-related violations from 2001 to 2010. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(2) of the Act states in pertinent part:

Criminal and related grounds. —

(A) Conviction of certain crimes. —

(i) In general. — Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of —

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, or

(II) a violation of (or conspiracy or attempt to violate) any law or regulation of a State, the

United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

Section 101(a) of the Act provides, in pertinent part:

As used in this Act-

(48)(A) The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where-

(i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

(B) Any reference to a term of imprisonment or a sentence with respect to an offense is deemed to include the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment or sentence in whole or in part.

The record shows that on May 14, 2002 the applicant entered a plea of Nolo Contendere for Possession of a Controlled Substance, Cannabis less than 20 grams, in violation of Florida Statute 893.13(6)(B), for his conduct on or about March 21, 2002. While the court withheld adjudication of guilt, the applicant was assessed costs of \$378. As noted by the field office director and conceded by counsel, this constitutes a conviction for immigration purposes under sections 212(a)(2)(A)(i)(II) and 101(a)(48)(A)(i)(ii) of the Act.

The record shows that the applicant has additionally been arrested and charged with possession of cannabis and drug paraphernalia in Florida multiple times, twice while speeding including once while traveling at a rate in excess of 100 mph and once in conjunction with charges of assault with a deadly weapon/domestic violence. These charges were ultimately dismissed, once as a result of post-conviction Nolle Prosecution relief entered nearly four years after the applicant's conviction.

While these are not considered convictions for immigration purposes, the circumstances surrounding the applicant's conduct leading to these arrests and his lengthy record of troubling traffic violations including a hit-and-run are, despite counsel's assertions to the contrary, properly considered in determining whether he warrants a favorable exercise of discretion.

The applicant does not contest whether he has been convicted of a crime involving a controlled substance, or whether he is inadmissible under section 212(a)(2)(A)(i)(II) of the Act. The AAO finds sufficient support that the applicant's conviction under Florida Statute 893.13(6)(B) constitutes a conviction for a crime involving a controlled dangerous substance, cannabis less than 20 grams, rendering him inadmissible under section 212(a)(2)(A)(i)(II) of the Act. Because the applicant's conviction relates to a single offense of simple possession of 30 grams or less of marijuana, he is eligible for consideration for a waiver under section 212(h) of the Act.

A waiver of inadmissibility under section 212(h) 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, parent or child of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's U.S. citizen spouse is the only qualifying relative. 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 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 applicant’s spouse is a 55-year-old native and citizen of the United States who has been married to the applicant since January 2002. They have no children together but the applicant has three adult daughters from a prior marriage ages 19, 22, and 25-years-old. The applicant’s spouse states that the applicant makes her and her daughters happy, she depends on him for everything and it would break her heart to be without him. She writes in August 2010 that her doctors have her “under observation” after a blood pressure scare. Medical records for the same month show that the applicant’s spouse has “pre-hypertension” and is obese with a higher than normal body mass index and waist circumference which places her at an “increased risk for disease.” [REDACTED] writes in October 2011 that he treats the applicant’s spouse for migraines, hypertension and tendonitis and that she is on several medications. A prescription pad page from [REDACTED] of Orlando, dated October 4, 2011 notes only that the applicant’s spouse is “under our care for treatment of venous insufficiency.” Details concerning her specific condition, the severity thereof, her current treatment and/or prognosis have not been submitted for the record. A [REDACTED] internet printout on venous insufficiency while generally informative is insufficient to demonstrate the applicant’s spouse’s condition or any limitations related thereto. A medical history dated September 21, 2011 notes that the applicant’s spouse has “no anxiety, no depression, and no sleep disturbances.” The evidence in the record does not address or demonstrate any role

played by the applicant in his spouse's medical care, nor does it indicate that separation from him would impact her medical conditions. While the AAO recognizes that the applicant and his spouse have been married for more than 10 years and the latter has some health concerns, the evidence is insufficient to demonstrate that the applicant's spouse is medically or emotionally dependent upon the applicant or that the challenges she faces in this regard are beyond those ordinarily associated with the inadmissibility or removal of a loved on.

The applicant's spouse states that the applicant works hard to provide for her through his restaurant. Counsel contends that the applicant is the main provider and points to income tax returns from 2006 to 2010 which show that he earns a greater portion of the household income than his spouse. While the AAO recognizes that the applicant currently earns more through his restaurant than his spouse through her nursing career, the evidence in the record is insufficient to establish that she would be unable to support herself in his absence.

The AAO acknowledges that separation from the applicant would cause various difficulties for the applicant's spouse. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, the applicant's spouse states that while she would love to visit Tunisia she would never be able to live there because she and her daughters have their lives in the United States and to be separated from them would be utterly inhumane. She explains that her job is in the United States and her employment prospects in Tunisia would be severely limited if any exist at all. The applicant's spouse writes that she receives treatment for her veins in the United States and that all her doctors are here. She indicates that the culture in Tunisia is very different and she has lived her entire life in the United States. Counsel adds that Tunisia was one of the first countries involved in the "Arab Spring" and travel warnings concerning the country have been issued by the U.S. State Department. The AAO has reviewed the country conditions reports in the record as well as the current travel warning, dated October 19, 2012. Therein U.S. citizens are warned that the U.S. Embassy and the American Cooperative School in Tunis were attacked in September 2012, the security situation in Tunisia remains unpredictable, sporadic episodes of civil unrest have occurred throughout the country and demonstrations can become violent.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including adjustment to a country and culture so different from the only one she has ever known; that she has resided her entire life in the United States and has never even visited Tunisia; her close family and community ties to the United States, particularly to her three adult daughters; her home ownership and employment in the United States; her ongoing relationship with trusted physicians in the United States who are familiar with her medical conditions; and stated employment, health-related, and safety concerns for Tunisia. Considered in the aggregate, the AAO finds the evidence sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate to Tunisia to be with the applicant.

Although the applicant has demonstrated that his qualifying relative spouse would experience extreme hardship were she to relocate to Tunisia to join him, we can find extreme hardship

warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 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 a qualifying relative in this case. Accordingly, the applicant has not established that he is statutorily eligible for a waiver under section 212(h) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) 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.