



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

(b)(6)

DATE: **MAY 06 2013**

OFFICE: NEW YORK, NY

FILE: [REDACTED]

IN RE: [REDACTED]

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

  
f.  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, New York, New York, and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the underlying application denied.

The applicant is a native and citizen of Tunisia 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 accrued one year or more of unlawful presence and seeking admission within ten years of his most recent departure. He is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude, trafficking in counterfeit goods. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(h) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(h), in order to remain in the United States with his wife.

The district 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 District Director*, January 31, 2012. On appeal, the AAO found that, while the applicant had established a qualifying relative would suffer extreme hardship by virtue of relocation, he had failed to show that extreme hardship would be imposed on a qualifying relative by separation from the applicant. *Decision of the AAO*, April 25, 2012.

In support of the motion, the applicant's counsel submits a brief asserting that USCIS erred in finding that the applicant's wife would not suffer extreme hardship without her husband in the United States and/or improperly considered or rejected the evidence submitted, and provides new evidence not previously available, including letters from a psychologist and a landlord, medical prescriptions, updated employment information, and financial information. The record includes the supporting documents submitted with the Form I-601, the appeal of the waiver denial, and the current motion. 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-

.....

(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...

The record reflects that the applicant was unlawfully present in the United States from June 12, 2001, when he entered without inspection, until July 25, 2009, when he departed the United States for Tunisia.

The AAO also found the record to reflect that the applicant is inadmissible pursuant to section 212(a)(2)(A)(i)(I), which states in pertinent part:

(i) [A]ny 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 . . . is inadmissible.

Section 212(h)(1) of the Act provides for a waiver of a section 212(a)(2)(A)(i)(I) inadmissibility as follows:

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

The record shows that the applicant charged with trafficking in counterfeit goods or services on February 16, 2011, while he was in Tunisia. After being paroled into the country to be a witness in the FBI's case against other counterfeiters, he pled guilty to one count of trafficking in counterfeit goods or services on February 9, 2012 and was sentenced to probation for three months.<sup>1</sup> As noted in the prior decision of the AAO, the applicant's criminal case was sealed at the time the appeal was filed, but the AAO found counsel's statements regarding the applicant's February 9, 2012 guilty plea and sentencing to be sufficient to establish that he has been convicted of trafficking in counterfeit goods or services, 18 U.S.C. § 2320. However, there is no indication why, on motion, the applicant cannot provide these records.

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 other family members can be considered only insofar as it results in hardship to a qualifying relative. The

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<sup>1</sup> The District Director's decision finding the applicant inadmissible solely on the basis of his unlawful presence pursuant to section 212(a)(9)(B)(i)(II) of the Act was issued prior to the applicant's guilty plea.

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-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

speaking 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. INS*, 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.

Previously, the AAO concluded that the applicant had established his wife would suffer extreme hardship if she relocated to Tunisia. We do not revisit that finding, but rather examine the evidence on the record to determine whether the applicant has established that his absence would impose extreme hardship on his spouse.

As regards whether the qualifying relative is experiencing extreme hardship due to separation from the applicant, the updated record confirms the applicant's wife has been under the care of a clinical psychologist for nearly a year since entering therapy due to the stress of her husband's uncertain immigration situation. *See Psychotherapist Letter*, May 21, 2012. This letter confirming ongoing psychotherapy, as well as documentation of prescription antidepressants, substantiates that the applicant's wife has followed treatment recommendations stated in a 2010 psychological evaluation diagnosing her major depression. The evaluation attributed her depression to her husband's absence and to caring for a mobility-challenged mother, while working full-time as a bank employee. *See Psychological Evaluation*, September 26, 2010. Although the record reflects that, as the eldest of four siblings, all of whom live together with their mother, the applicant's wife feels responsible for attending to her mother's special needs, there is no evidence showing why her three adult siblings are unable to assist in caring for their mother and a lack of evidence regarding her actual condition.

Regarding the financial component of separation hardship, the record reflects that while the applicant's wife has ongoing expenses, including a lease payment on the family home, utilities, food, and legal fees, there are four other adults -- her siblings and her husband -- available for household maintenance. Evidence of collection agency communications indicates financial difficulties, but there is no evidence her siblings cannot support themselves or assist the household. Nor is there any evidence showing that the applicant, who was paroled into the United States over two years ago, is contributing income of which his wife would be deprived if he departed. Documentation establishes the qualifying relative as having annual income in the \$35,000 to \$40,000 range and paying monthly rent of \$2,600. The applicant has provided a SSI-D statement showing his mother-in-law receives \$911 in monthly social security disability benefits. Despite claims of the strained economic circumstances of the household, the applicant has thus failed to show that his removal would further burden his wife's economic situation.

For all these reasons, while the AAO recognizes that the applicant's absence will cause emotional pain to his wife, there is insufficient evidence that the cumulative effect of the emotional and

financial hardships to her due to her husband's inadmissibility will rise to the level of extreme. The AAO concludes based on the evidence provided that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would not suffer hardship beyond those problems normally associated with family separation.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's wife will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's wife's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

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 and, accordingly, the prior decision of the AAO will be affirmed.

**ORDER:** The motion is granted. The waiver application remains denied.