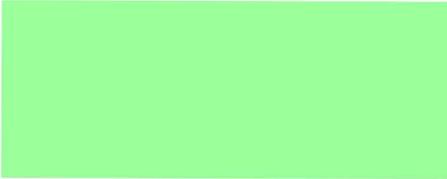


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

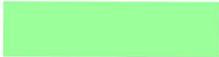


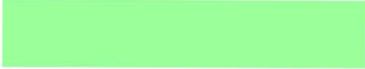
U.S. Citizenship
and Immigration
Services



Date: **MAY 28 2013**

Office: SACRAMENTO

FILE: 

IN RE: Applicant: 

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

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 our 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-190B, 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 a 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 "Michael Shumway".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a citizen and national of Morocco who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i), for having been convicted of crimes involving moral turpitude and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182 (a)(6)(C)(i), for having procured admission to the United States through fraud or willful misrepresentation of a material fact. The applicant is married to a U.S. citizen. He seeks waivers of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. § 1182(h) and (i), in order to remain in the United States with his U.S. citizen spouse.

In a decision dated July 31, 2012, 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 Ground of Inadmissibility (Form I-601) accordingly.

On appeal, counsel for the applicant contends that the field office director erred in denying the applicant's waiver application. Counsel asserts that the evidence outlining psychological, medical and financial difficulties demonstrates extreme hardship to the applicant's qualifying relative wife.

The record includes, but is not limited to: copy of the applicant's birth certificate and passport; the applicant's wife statement; a statement by the applicant; country conditions documentation; medical documentation; a copy of the applicant's marriage certificate; copies of income tax returns and other financial documentation; and documentation regarding the applicant's criminal history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act provides, in pertinent part, that:

- (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

The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules

of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required *mens rea* may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record shows that on November 1, 2002, the applicant was convicted in the Criminal Chamber of the Court of Appeal of Rabat of writing bad checks (not paying a check when the payment was due) in violation of article 316 of the Commerce Code. The applicant was sentenced to imprisonment for a period of 18 months and was ordered to pay court costs. The record further reflects that the applicant was convicted of writing bad checks in 1988 and was sentenced to six months imprisonment. The field office director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. As the applicant does not dispute inadmissibility from these convictions on appeal, and the record does not show the determination to be erroneous, the AAO will not disturb the finding of the field office director.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section provides, in pertinent part, that:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –

. . .

(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 applicant was also found to be inadmissible for under section 212(a)(6)(C) of the Act, which provides, in pertinent part, that:

(i) 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.

A nonimmigrant alien who applies for adjustment of status must complete a Form I-485, Application to Register Permanent Residence of Adjust Status. Part 3 of Form I-485, at Question 1b., asks an applicant the following: “Have you ever, in or outside of the United States [b]een arrested, cited, charged, indicted, convicted, fined, or imprisoned for breaking or violating any law or ordinance,

excluding traffic violations?” The applicant answered “No” even though at the time of filing the July 18, 2010 application, he had already been found guilty of the above-mentioned criminal offenses. We note that the applicant signed the application on July 13, 2010. Therefore, the record conveys that the applicant willfully failed to disclose in the Form I-485 the material fact of his criminal convictions, which render the applicant inadmissible to the United States. Additionally, the Summary of Findings report of a USCIS site visit on August 19, 2011 reflects that the applicant admitted to Immigration Officer [REDACTED] that he willfully withheld information regarding his criminal convictions. Based on the record, we find the applicant inadmissible under section 212(a)(6)(C) of the Act for seeking admission into the United States by fraud or willful misrepresentation of a material fact. The applicant does not contest his inadmissibility pursuant to this ground on appeal.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

The AAO begins its analysis by noting that a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is first dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. 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. The applicant’s U.S. citizen wife is the qualifying relative in these proceedings. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an 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 the 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 is 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 AAO first considers the hardship claimed to the applicant's spouse if she were to remain in the United States without the applicant. The primary hardship claimed is the medical and psychological hardship the applicant's wife currently experiences. In her affidavit dated May 23, 2012, the applicant's wife indicates that she experienced an anxiety attack when she learned that her husband's waiver application was denied. The applicant's wife further states that her mental state will be jeopardized if the applicant is forced to relocate to Morocco. The applicant's wife asserts that she

sustained a workplace injury. In support, the applicant submitted medical documentation demonstrating that the applicant sustained a knee sprain, which required she take medical leave from work. However, the documentation also reflects that the ligaments and other joints appear normal. Also, the applicant's wife asserts in her statement that she has since returned to work and has resumed her employment as a nurse. Regarding the applicant's wife's injury, we note the record reflects that the applicant's wife has three daughters from a prior marriage, and the record evidence does not demonstrate that the applicant is the sole family member who could and would care for her should the need arise. The AAO acknowledges that the applicant's wife experienced a mental health episode and sustained an injury on her left leg. However, it finds that the evidence regarding medical and psychological conditions does not demonstrate more than the common hardship associated with inadmissibility or removal.

The applicant's spouse states she is concerned about the applicant's ability to remain in the United States. She asserts that the applicant has been a source of support in dealing with her medical conditions, and in dealing with her anxiety attack. The AAO acknowledges that the applicant's spouse would experience emotional difficulties as a result of separation from the applicant, but finds that the evidence does not demonstrate that this hardship is extreme. The record evidence as presently constituted indicates that the applicant's qualifying relative faces no greater hardship than the unfortunate but common difficulties arising whenever a spouse is denied admission. The Board has long held that the common or typical results of inadmissibility do not constitute extreme hardship, and has listed separation from family members and emotional difficulties as factors considered common rather than extreme. *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). U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991).

The applicant's wife conveys that she requires financial support from the applicant. She submitted pay stubs which show that she is employed as a nurse and earned \$49,758.56 in 2011. The record also contains the applicant's husband's W-2 which reflects that he earned \$7,170 in 2011. Here, the documentation in the record indicates that the applicant's wife is the main provider for their household. This finding is further corroborated by the income tax returns submitted in support of the appeal, which show the applicant's wife as the primary source of their household income. Though the applicant's wife asserts that her husband is very generous and financially assists her at home, the applicant has only partially submitted invoices of their expenses. Therefore, the applicant's wife has not provided enough documentation to demonstrate that her income is not sufficient to pay all of her household expenses, that the applicant financially contributes to their household, or that she will experience financial difficulties if the applicant is forced to return to Morocco.

In addition, the record also fails to establish extreme hardship to the applicant's wife if she relocates to Morocco with the applicant. The AAO acknowledges that the applicant's wife is a United States citizen and that record evidence suggests she has resided in the United States her entire life. Additionally, the AAO acknowledges that the applicant's spouse's immediate family members, including her daughters and grandchildren, reside in the United States. However, the applicant has

not shown that her relocation to Morocco, or separation from her daughters and grandchildren, would elevate her hardship to an extreme level. Furthermore, the record does not establish that the applicant's wife would be unable to obtain employment upon relocation that would allow her to continue to practice as a nurse. Although the applicant's assertions have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay: in administrative proceedings, that fact merely affects the weight to be afforded it.").

The AAO takes note of the current country conditions in Morocco from the information provided in U.S. Department of State report included in the record. The applicant has not indicated, however, how those conditions would affect his wife specifically. The record includes newspaper articles and reports related to spousal abuse against women in Morocco. Taken together, the AAO finds the documentary submissions insufficient to demonstrate that the applicant's wife would experience extreme hardship should she relocate to Morocco. Although we note there is currently a reported increase in spousal violence in Morocco, the applicant, as her husband, has not shown that she would be specifically affected by conditions there. Also, the applicant has not provided sufficient evidence regarding his spouse's inability to adapt culturally to life in Morocco. Furthermore, though we acknowledge the applicant's wife's assertions regarding authorized periods of stay if she relocates to Morocco, we note that the record does not contain documentary evidence corroborating her assertions regarding fines and imprisonment for visa overstays, or a 90-day general admission period for spouses of Moroccan citizens. As such, little weight can be afforded to them. *See Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay: in administrative proceedings, that fact merely affects the weight to be afforded it."). Accordingly, the record does not show that relocation to Morocco would cause extreme hardship to the applicant's spouse. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66.

Based on the foregoing, the AAO finds that the evidence in the record, when considered in the aggregate, fails to establish that the applicant's qualifying relative would experience hardship that rises beyond the common results of removal or inadmissibility. The documentation in the record therefore fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States, as required by sections 212(h) and 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under sections 212(h) and 212(i) the Act, the burden of proving eligibility rests 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.