



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **MAR 26 2014**

OFFICE: NEW YORK [Redacted]

IN RE: [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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The District Director, New York, New York denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Morocco who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed crimes involving moral turpitude and 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 an immigration benefit by fraud or willful misrepresentation.. The applicant seeks a waiver of inadmissibility in order to remain in the United States with his U.S. citizen spouse.

The District Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative, and denied the application accordingly. *Decision of the District Director*, dated April 17, 2013.

On appeal, counsel for the applicant asserts that the applicant's spouse would suffer emotional and financial hardship upon separation from the applicant and leave behind cultural familiarity and family ties upon relocation to Morocco. Counsel also asserts that the applicant did not enter the United States through misrepresentation.

In support of the waiver application and appeal, the applicant submitted identity documents, letters of support, psychological evaluations, background country conditions relating to Morocco, affidavits from the applicant and his spouse, financial documentation, and criminal court documents. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

(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.
- (II) a violation of (or a 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:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of 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 if –

(1) (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

Amongst other criminal convictions, the applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act for convictions for two crimes involving moral turpitude. Specifically, the applicant was convicted of shoplifting on two separate dates, October 4, 2000 in [REDACTED] Municipal Court, and December 4, 1997 in [REDACTED] Court. The applicant does not dispute this finding on appeal.

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

(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.

Section 212(i) of the Act provides:

(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 immigrant 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 applicant asserts that entered the United States in 1996 with a B1/B2 visitor visa, returned to Morocco at the end of 1996 and reentered the United States with that same visa upon his last entry in 1997. The record contains a copy of the applicant's I-94 dated June 2, 1997 and a copy of a visa and his passport. The I-94 number indicated on the submitted copy is the same number stated by the applicant on his Form I-485, Application to Register Permanent Residence or Adjust Status, signed and dated February 3, 1998. However, a search of immigration records indicates that this number relates back to an individual other than the applicant, and there is no record of his admission as a B1/B2 visitor.

Without further evidence, the applicant has not satisfied his burden of demonstrating that he was admitted with a B1/B2 visitor and is not inadmissible to the United States pursuant to section

212(a)(6)(C)(i) of the Act. However, as the applicant is currently inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, the AAO will not make a determination as to the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(h) waivers of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent, or child in the case of a section 212(h) waiver. Hardship to the applicant is not considered in section 212(h) waiver proceedings unless it causes hardship to a qualifying relative. In this case the applicant's U.S. citizen spouse is presented as the applicant's qualifying relative. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 record reflects that the applicant is a 42-year-old native and citizen of Morocco. The applicant’s spouse is a 57-year-old native and citizen of the United States. The applicant is currently residing with his spouse in [REDACTED] New York.

Counsel for the applicant asserts that the applicant is the only one contributing to the household income and that the applicant’s spouse would have to file for bankruptcy without him. The applicant’s spouse asserts that she conducts some online sales out of the home, but that the applicant provides completely for their household with his income. It is noted that the record contains 2012 tax records for the applicant and his spouse indicating that she operates a business with a net profit of \$11,700 in that year. Years of tax records indicate that the applicant and his spouse also possess assets including real estate in Connecticut. The applicant’s spouse contends that she has not worked for 15 years since closing down her lingerie and jewelry store due to rent increases. As noted, the applicant’s spouse acknowledges that she is engaged in some commercial transactions, as she derives profit from her online business. Further, the applicant’s spouse asserts that she used to work as a part-time clerk at the time of her marriage, but did not like to work in an office environment. A 2009 psychosocial/family assessment of the applicant and his spouse also states that the applicant’s spouse was previously employed in sales and lingerie design and worked in real estate after obtaining a license. There is no indication that the applicant’s spouse would be unable to work outside the home, as necessary, upon separation from the applicant. There is also no indication that the applicant’s spouse would be unable to sell the couple’s assets or reside in the property she owns upon separation from the applicant. The record is insufficient to demonstrate that the applicant’s spouse would not have the resources to meet her financial obligations apart from the applicant.

The applicant's spouse asserts that she relies upon the applicant not only in financial matters, but also for emotional support and companionship. The applicant's spouse asserts that her mother and brother passed away and she is afraid that she will sink into a depression without the applicant. The record contains a 2009 psychosocial/family assessment of the applicant and his spouse stating that the applicant's spouse has difficulty falling asleep and is not her usual self due to stress relating to the applicant's immigration status. The record contains a letter dated May 14, 2013 from a licensed mental health counselor stating that the applicant's spouse is in therapy and through her sessions has been able to sustain her daily functions and conduct her business. The letter states she is in a fragile state of mind, but does not contain further detail about her condition. An additional psychological evaluation from [REDACTED] was submitted to the record and states that the applicant's spouse has trouble falling asleep, has a poor appetite, and is persistently sad and anxious when she thinks of becoming separated from the applicant. The evaluation, based on an interview that took place on February 13, 2014, further states that she is suffering from major depressive disorder – moderate and has experienced episodes of depression for decades as a result of a biological (genetic) form of depression, and notes that the applicant's sister and brother both committed suicide, though the applicant does not have suicidal ideation. The evaluation states that the applicant was referred to a psychologist, but there is no further information concerning any current treatment or from the mental health counselor who was treating the applicant's spouse in 2013.

It is acknowledged that separation from a spouse nearly always creates hardship for both parties, and the record establishes that the applicant's spouse would suffer emotional hardship due to separation from the applicant. However, there is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer hardship that rises to the level of extreme upon separation from the applicant.

Counsel for the applicant asserts that the applicant's spouse would be unable to make a life for herself in a country with new customs, language and traditions so late in life. The applicant contends that the applicant's spouse would be unable to adapt to a new lifestyle in Morocco. It is noted that the record does not contain any information other than counsel's statements concerning the applicant's spouse's inability to communicate upon relocation to Morocco. Absent supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant's spouse asserts that she has wanted to visit Morocco with the applicant.

The applicant's spouse asserts that following the death of her mother and brother, her sister is her only family tie in the United States apart from the applicant. The record contains a letter from the applicant's spouse's sister, dated May 8, 2013, asserting that the applicant's spouse and the applicant have spent the holidays at her home for the last 15 years and that she has visited their home in [REDACTED] on occasion. The applicant's spouse's sister contends that she is close and in constant contact with the applicant's spouse. However, the record contains an April 9, 2009 affidavit from the applicant's spouse asserting that she had one brother and sister in the United States, but did not have the kind of relationship with them most siblings would desire. The

applicant's spouse contended that she had not even spoken to her sister in over 8 years and she would only speak with her brother on occasion.

The record is insufficient to determine that the hardships faced by the applicant's spouse, in the aggregate, would rise to the level of extreme hardship if she relocated to Morocco.

The record does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(h) 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 this waiver as a matter of discretion.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.