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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**



H5

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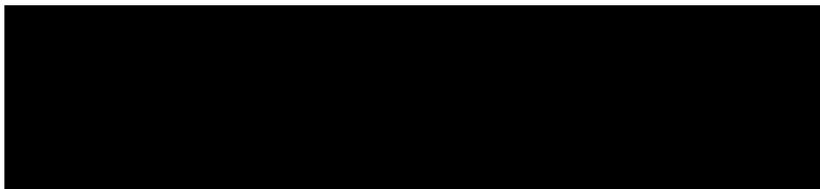


IN RE: Applicant:



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

Thank you,

for
Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Rome Italy, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The waiver application will be approved.

The record establishes that the applicant is a native and citizen of Morocco who was found inadmissible to the United States under 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 been unlawfully present in the United States for more than one year. The applicant was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure an immigration benefit by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant had 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. *Decision of the Field Office Director*, dated June 18, 2009.

In support of the appeal, counsel for the applicant submits a brief and referenced exhibits, including a letter from a psychologist; photographs of the applicant's spouse and family; documentation regarding country conditions in Morocco; and financial documentation. The entire record was reviewed and considered in rendering a decision on the appeal.

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

Aliens Unlawfully Present.-

(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...

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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, 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 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

Regarding the field office director's finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, the record indicates that the applicant entered the United States without inspection in December 2001 and departed the United States pursuant to a removal order in March 2005. The applicant accrued unlawful presence from 2001 until 2005. The field office director correctly found the applicant to be inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence for more than one year. On appeal, the applicant does not contest this finding of inadmissibility.

Regarding the field office director's finding that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act, for fraud or willful misrepresentation, the record establishes that in January 2005, the applicant was encountered at the Port of Entry, Champlain, New York, after having been denied entry into Canada. The applicant identified himself as [REDACTED] and claimed to be the true owner of the Form I-551, Alien Register Card, bearing his name. At secondary inspection, the applicant again identified himself as [REDACTED] and claimed to be a permanent resident of the United States. After a fingerprint check, the applicant was confronted and admitted his true identity and confirmed that he was not a lawful permanent resident of the United States. He admitted that the Form I-551 he had presented belonged to his brother and that he had taken the information without his brother's knowledge or consent. *See Record of*

Deportable/Inadmissible Alien, dated January 2, 2005 and *Criminal Complaint*, dated January 3, 2005. The applicant was thus found inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having attempted to procure an immigration benefit by fraud or willful misrepresentation.

The AAO notes that in January 2005, the applicant was convicted of Possession of a False Alien Registration Receipt Card. The issue of whether or not this conviction is for a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act has not been addressed. Nevertheless, because the applicant is inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(a)(9)(B)(v) and 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act are 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 spouse is the only qualifying relative in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a 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 U.S. citizen spouse contends that she will suffer medical, emotional and financial hardship were she to accompany the applicant abroad based on the denial of the applicant’s waiver request. In a declaration, the applicant’s spouse first explains that her maternal family has a prevalence of cancer and throughout her life she has been tested regularly but were she to relocate abroad, she would not be able to receive adequate and affordable health care coverage. She further explains that she suffers from kidney stones and needs regular testing and monitoring by physicians familiar with her diagnosis and treatment plan. Moreover, the applicant’s spouse outlines that her two children, born in 1978 and 1985, and her grandchild reside in the United States and were she to relocate abroad, she would experience emotional hardship due to long-term separation from them. Furthermore, the applicant’s spouse explains that she was born in the United States and is unfamiliar with the country, culture, language and customs of Morocco and a relocation abroad would cause her hardship. Finally, the applicant’s spouse references the problematic country conditions in Morocco, including a substandard economy, safety concerns for women and the inability to find a Baptist Church as Morocco is predominantly Muslim. *Affidavit of* [REDACTED]

The record indicates that were the applicant's U.S. citizen spouse to relocate to Morocco to reside with the applicant due to his inadmissibility, she would be concerned about her health¹ and livelihood. Moreover, the applicant's spouse would suffer hardship due to the struggles she would encounter in Morocco, including unfamiliarity with the country, language and culture; long-term separation from her children and grand-child, community and church; and loss of her gainful employment.

With respect to remaining in the United States while the applicant relocates due to his inadmissibility, the applicant's spouse asserts that she would be emotionally heartbroken. To begin, as she explains, her family has a prevalence of cancer and were she to be diagnosed with breast cancer, she asserts that she would face extraordinary emotional hardship and anxiety about the ability to confront cancer alone. She notes that she does not believe she is emotionally strong enough to face the side effects from cancer treatment alone. In addition, the applicant's spouse explains that she has a loving relationship with her husband and is at peace with him, but continued separation will cause her anxiety and has already had a severe impact on her psychological state. Finally, the applicant's spouse contends that since her husband's departure, she has had to maintain two households and as a result, her savings have been depleted and she is no longer afford to attend college. *Supra* at 1-3, 6-7.

In support of the emotional hardship referenced by the applicant's spouse, a letter has been provided [REDACTED] states that the applicant's spouse presents as depressed and anxious as a result of long-term separation from her husband. [REDACTED] concludes that therapy, and possibly medication, will assist the applicant's spouse cope with prolonged separation from her spouse but that even with intervention, she may not be able to maintain her equilibrium. *Letter from [REDACTED] dated July 28, 2009.* In addition, evidence has been provided establishing that the applicant's spouse is supporting two households, one in the United States and one in Morocco, as a result of her husband's low-paying job in Morocco as a teacher.

The record reflects that based on a totality of the circumstances, the AAO concludes that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States due to his inadmissibility.

¹ As noted by the U.S. Department of State,

Adequate medical care is available in Morocco's largest cities, particularly in Rabat and Casablanca, although not all facilities meet high-quality standards. Specialized care or treatment may not be available. As noted by the U.S. Department of State,

Medical facilities are adequate for non-emergency matters, particularly in the urban areas, but most medical staff will have limited or no English skills. Most ordinary prescription and over-the-counter medicines are widely available. However, specialized prescriptions may be difficult to fill and availability of all medicines in rural areas is unreliable.

Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse would face if the applicant were to remain in Morocco, regardless of whether she accompanied the applicant or remained in the United States, gainful employment while in the United States, and community ties. The unfavorable factors in this matter are the applicant's fraud or misrepresentation and periods of unlawful presence and employment, as outlined in detail above, and the above-referenced conviction.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

On February 8, 2005, the applicant was ordered removed from the United States and he was deported on March 3, 2005. As such, he is inadmissible under section 212(a)(9)(A) of the Act and

must request permission to reapply for admission. The AAO notes that the field office director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212) in a separate decision. The Form I-212 was denied solely based on the denial of the Form I-601. A subsequent motion to reopen and reconsider the denial of the applicant's Form I-212 was rejected as untimely.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO has found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated in that finding, the field office director shall reopen the applicant's Form I-212 and grant it as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.