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**U.S. Department of Homeland Security**
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

DATE: JAN 06 2012 Office: NEWARK, NJ FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Ground of Inadmissibility under Section 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.

If you believe the law was inappropriately applied by us 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. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Morocco who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having obtained an immigration benefit through fraud or the willful misrepresentation of a material fact. The applicant is the spouse of a United States citizen and the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated July 10, 2009.

On appeal, counsel asserts that the Field Office Director's decision was arbitrary and capricious. He contends that the applicant has submitted sufficient documentation to establish that a denial of his waiver application would result in extreme hardship to his U.S. citizen spouse. *Form I-290B, Notice of Appeal or Motion*, dated August 3, 2009.

The record includes, but is not limited to, a statement from the applicant's spouse; a letter from the applicant's employer; copies of tax returns and W-2 Wage and Tax Statements for the applicant and his spouse; a copy of a lease agreement; copies of bills; a copy of the applicant's divorce certificate for his prior marriage. The entire record was reviewed and all relevant evidence considered in reaching a decision on appeal.

Section 212(a)(6)(C) of the Act 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.

In this case, the record reflects that in obtaining a B-1 nonimmigrant visa to the United States in 2001, the applicant indicated on the OF-156, Nonimmigrant Visa Application, that he was married to a [redacted] when, in fact, a divorce certificate submitted in the record shows that this marriage had ended in divorce in December 1999. In that the applicant misrepresented his marital status in obtaining his nonimmigrant visa to the United States, he is inadmissible under section 212(a)(6)(C)(i) of the Act.

In considering whether the misrepresentation on the applicant's nonimmigrant visa application bars his admission to the United States pursuant to section 212(a)(6)(C)(i) of the Act, the AAO will first consider whether it is a material misrepresentation for immigration purposes.

The Supreme Court in *Kungys v. United States*, 485 U.S. 759 (1988) found that the test of whether concealments or misrepresentations were "material" was whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect United States Citizenship and Immigration Services (USCIS) decisions. In addition, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements of a material misrepresentation are as follows:

> A misrepresentation made in connection with an application for visa or other documents, or with entry into the United States, is material if either:
>
> a. the alien is excludable on the true facts, or
> b. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (AG 1961).

In this case, the applicant's misrepresentation of his marital status on his nonimmigrant visa application constitutes a material misrepresentation under the Act. By stating that he was married, the AAO finds that the applicant cut off a line of inquiry that was relevant to his request for a nonimmigrant visa, and which might have resulted in a denial of his 2001 nonimmigrant visa application under section 214(b) of the Act. Accordingly, the applicant obtained an immigration benefit through the willful misrepresentation of a material fact and is barred from admission to the United States under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute the basis of his inadmissibility.

Section 212(i) of the Act provides 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 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.

A waiver of inadmissibility under section 212(a)(i) of the Act is dependent on a showing that the bar to admission would impose extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant or other family members can be considered only insofar as it results in hardship to a qualifying relative. The applicant's 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 United States Citizenship and Immigration Services then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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 AAO now turns to the question of whether the applicant in the present case has established that his U.S. citizen spouse would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel asserts that the applicant's spouse would suffer hardship if she relocates to Morocco because she does not speak Arabic, would find it impossible to function in Morocco and would not be able to do the things she normally does in the United States. Counsel also states that the applicant's spouse is concerned that the medical treatment she currently receives would not be available to her in Morocco and that she would not have any of the educational and employment opportunities she now enjoys.

In her October 14, 2008 statement, the applicant's spouse contends that she would be emotionally, physically and mentally devastated if she relocates to Morocco. She claims that a move to Morocco would result in a lack of educational and employment opportunities, a lack of health care and treatment of preexisting conditions, and would affect her childbearing plans. The applicant's spouse also states that she has significant family ties to the United States and would have none in Morocco except for the applicant, does not speak Arabic and as a result would not be able to communicate and would be unemployable and helpless. The applicant's spouse further states that she is accustomed to a certain standard of living and since she would be unemployed in Morocco, that it would be very difficult for her to maintain her standard of living. She indicates that relocation to Morocco would destroy her family ties in the United States, and that her reduced financial situation would prevent her from continuing to help her grandmother or traveling to the United States to visit her family.

The AAO acknowledges the preceding claims regarding the impact of relocation on the applicant's spouse. We note that the record does not contain country condition information on Morocco's economy and employment situation and its health care system to establish that the applicant's spouse would not be able to obtain adequate medical care for any medical problems she may have. We do find, however, that the applicant's spouse's inability to speak, read or write Arabic would significantly affect her ability to obtain employment or adapt to Moroccan culture and society. When the impediments created by the applicant's spouse's inability to speak Arabic, her unfamiliarity with Moroccan culture, the absence of family ties to Morocco and the hardships routinely created by

relocation are considered in the aggregate, the AAO finds that the applicant has established that his spouse would suffer extreme hardship if she relocated to Morocco with him.

On appeal, counsel asserts that the applicant's spouse would suffer emotional and financial hardship if the applicant is removed from the United States. Counsel states that the applicant's spouse has expressed her deep love for the applicant, that she wishes to remain with him in an enduring relationship and that separation from the applicant would affect her emotionally.

In her October 14, 2008 statement, the applicant's spouse states that the thought that she and the applicant might be separated due to his inadmissibility overwhelms her with fear and anxiety. She states that she has debts and other financial obligations in the United States, which she would not be able to discharge without the applicant's help. She claims that she relies on the applicant's income to meet their monthly expenses. The applicant's spouse states that she and the applicant have a nurturing relationship, that it is important for them to maintain their family unity and integrity, and that separation would be unbearable and would destroy the unity they sought when they got married.

The AAO notes the claims by counsel and the applicant's spouse regarding the impact of separation from the applicant, but does not find the record to support them. The record does not contain documentation e.g., medical records or reports, to establish the nature or severity of the emotional hardship that she would experience as a result of her separation from the applicant or how such emotional hardship would affect her ability to meet her daily responsibilities. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Also, without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena,* 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano,* 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez,* 17 I&N Dec. 503, 506 (BIA 1980).

Regarding the financial hardship created by separation, the record contains limited information on the applicant's and his spouse's income and financial obligations. The record shows that the applicant's spouse's annual income for 2006 was $33,000, an amount that far exceeds the poverty line for a family of one. The AAO notes that the most recent documentation of income for the applicant's spouse is her W-2 from 2006, and with the exception of a single cable bill and a single utility bill from 2008, the other financial documentation of the applicant's financial obligations, e.g., the lease agreement, telephone bill, and a Wachovia debt notification, represent obligations from 2005-2006. The record does not contain evidence documenting the applicant's spouse's financial situation at the time of the appeal. While the record contains only two bills from 2008, it fails to demonstrate that the applicant's spouse is dependent on him for financial assistance or that her income alone would not be sufficient to meet the family's monthly financial obligations. Accordingly, the AAO finds that based on the evidence of record, the applicant has failed to establish that his spouse would experience extreme financial hardship without his income.

Based upon a review of the record, the AAO finds there is insufficient evidence to establish that the applicant's spouse would experience extreme hardship if the waiver application is denied and she continues to reside in the United States without the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also 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 the qualifying relative(s) in this case.

The record does not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility. Accordingly, he has failed to establish eligibility for a waiver of inadmissibility under section 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 application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely 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.