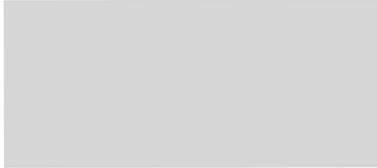




U.S. Citizenship
and Immigration
Services

(b)(6)



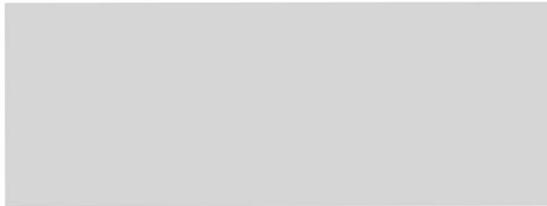
DATE: **APR 22 2015** Office: PHILADELPHIA

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds 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 (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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The applicant is a native and a 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 willfully misrepresenting a material fact to procure an immigration benefit. He is the spouse of a U.S. citizen and has two U.S. citizen children. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his family.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Decision of the Field Office Director*, dated April 29, 2014.

On appeal, the applicant, through counsel, asserts that he has demonstrated that his spouse will suffer extreme hardship and submits additional evidence of hardship.

The record contains, but is not limited to: a psychological report of the qualifying spouse; an affidavit from the qualifying spouse; medical documentation regarding the qualifying spouse; a letter from the applicant's employer and other financial documentation; identification documents for the applicant, qualifying spouse and their children; documentation demonstrating the validity of the applicant and qualifying spouse's marriage; and photographs. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

- (i) In general. 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 chapter is inadmissible.

The record indicates that in January 2001, the applicant claimed to be married on a non-immigrant visa application when in fact he was not married. The Department of State issued his non-immigrant visa, and with it he was admitted into the United States on January 25, 2001. He has not left the United States since his entry. The applicant is inadmissible for misrepresenting a material fact pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding on appeal.

Section 212(i) of the Act provides, in pertinent part:

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

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. Hardship to the applicant or his child 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 U.S. Citizenship and Immigration Services 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.

With respect to her hardship upon separation from the applicant, the qualifying spouse states that if the applicant returns to Morocco, she will experience psychological and financial hardships. In a report provided on appeal, a psychologist indicates that the qualifying spouse has experienced at least one period of depression and anxiety that was related to the applicant’s detention due to immigration issues. During this period the psychological report indicates that the applicant’s wife was prescribed medicine, but she discontinued using it because the side effects made her uncomfortable, and that, as a result, she does not want to resume treatment because she does not want to take medicine. The psychologist diagnosed her with major depressive disorder and confirms that she has been experiencing anxiety and depression “at levels of clinical significance.” In addition, she writes that the applicant’s spouse reports having insomnia, a loss of appetite, a lack of energy, tearfulness, anhedonia, and irritability. The psychologist also indicates that, according to the qualifying spouse, she has only one friend and limited social outlets other than the applicant. Although the psychologist’s report describes certain conditions the applicant’s spouse is experiencing, the record includes no evidence that his spouse has sought treatment or seen her doctor about her issues. Moreover, his spouse does not specifically address the psychological issues that she has been experiencing. Although we are sympathetic to the applicant’s spouse’s circumstances, the record does not show that psychological hardship to the applicant’s spouse and the symptoms she has experienced, according to the psychologist, are extreme, atypical, or unique compared to others separated from a spouse. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (common results of deportation are insufficient to prove extreme hardship, which is defined as hardship that is unusual or beyond that which would normally be expected upon deportation).

In addition, the applicant's qualifying spouse asserts that she would experience financial hardship if she were to remain in the United States without the applicant. She explains that he supports her financially while she is a stay-at-home mother. The record contains a letter from the applicant's employer and other financial information, including tax documents, to demonstrate that the applicant is the sole financial provider for their family. In addition, the applicant provides documentation regarding their expenses, such as their rent and utility bills, which indicate that the qualifying spouse depends greatly on the applicant's salary. While the applicant may be the sole provider for the family, he does not address his spouse's ability to find employment or explain why she would be unable to work. According to Form I-864, Affidavit of Support (Form I-864), the qualifying spouse has worked outside of the home and therefore appears capable of working. Moreover, her payroll information accompanying Form I-864 indicates that she worked for the same employer as the applicant and earned a comparable wage. The psychological report also notes that the qualifying spouse has a degree in French literature from Morocco and that the applicant has a technical degree in electronics from Morocco. The applicant also has not demonstrated that he would be unable to provide financial support from Morocco.

Although the record also contains several of the qualifying spouse's medical records, the applicant does not assert that she would experience medical hardships if she remains in the United States. The documentation the applicant provides includes office visit reports and other medical reports regarding ailments such as gallstones and abdominal pain. The reports also reflect that the applicant's spouse has experienced two miscarriages and breast biopsies. The applicant does not describe medical treatment or family assistance that his spouse currently requires. Without such evidence we are not in the position to reach conclusions concerning the severity of the applicant's spouse's current health conditions or the treatment she needs.

Therefore, based on the record before us, we are unable to find that separation from the applicant would result in extreme hardship for the qualifying spouse. While the record contains sufficient evidence to establish that the applicant's spouse would experience some emotional hardship due to separation, the evidence of psychological hardship does not support the applicant's assertion that it rises to the level of extreme. There is similarly insufficient evidence to establish that the applicant's spouse would be unable to meet her financial obligations or that she would experience financial hardship that rises above what is common. Considering these hardships upon separation in the aggregate, the record does not establish that they rise to the level of extreme hardship.

Concerning the hardships the applicant's spouse would experience if she were to relocate to Morocco with the applicant, the applicant's spouse, a native of Morocco, indicates that the family's financial situation would be "terrible." Similarly, according to the applicant's attorney, the applicant and qualifying spouse have no basis for support in Morocco, no housing, no medical treatment, and no job opportunities. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *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). Moreover, the applicant submits no documentation to corroborate assertions regarding the economic situation in Morocco, his spouse's medical conditions requiring treatment, or the unavailability of suitable healthcare there. Going on record without supporting documentary

evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *In re Soffici*, 22 I&N Dec. 158, 165 (Reg. Comm. 1998); see *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Further, although the psychologist reports that the applicant has no family in Morocco, she also indicates that the applicant's spouse has no family in the United States and that she is one of eight children born in Morocco. In addition, according to the applicant's spouse's G-325A Biographic Information form, her parents currently reside in Morocco. The applicant provides other no evidence addressing the extent of the qualifying spouse's family ties to Morocco.

The qualifying spouse also states that their daughters will have severely limited educational and work opportunities in Morocco, but the applicant does not address the impact that their daughters' hardship would have on his spouse. The hardship to the applicant's children is only relevant to the extent that their hardships affect his spouse. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse.

In this case, the record does not contain sufficient evidence to show that the hardships the qualifying spouse would experience upon relocation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The applicant has not supported assertions that the qualifying spouse would suffer financially upon relocation to Morocco, or that she would have other hardship related to relocation, including access to medical care or lack of family support.

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.

ORDER: The appeal is dismissed.