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



**U.S. Citizenship
and Immigration
Services**

H6



DATE: NOV 09 2011 Office: ROME, ITALY

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

ON BEHALF OF APPLICANT: SELF-REPRESENTED

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Rome, Italy. The decision 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)(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 and seeking admission within ten years of his last departure from the United States. The applicant is married to a United States citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States.

The Field Office Director found that the applicant had failed to establish 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 May 14, 2009.

On appeal, the applicant's spouse states that denial of the applicant's waiver request will result in extreme hardship to her. *Form I-290B*, dated June 6, 2009; *see also letter from the applicant's spouse*.

The record includes, but is not limited to, statements from the applicant's spouse and her daughter; evaluations of the applicant's spouse's mental health; medical statements relating to the applicant's spouse; supportive statements from friends and co-workers of the applicant's spouse; a tax return for the applicant's spouse for 2008; a letter relating to bankruptcy petitions filed by the applicant's spouse; photographs of the applicant's spouse's home; and a statement from the Psychology Faculty Advisor at [REDACTED]. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(9)(B) states in pertinent part:

(B) 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.

In the present case, the record reflects that the applicant was admitted to the United States on March 14, 1999, as a B-2 visitor. He was authorized to remain in the United States until September 13, 1999. The applicant remained in the United States after the expiration of his authorized stay until September 23, 2004, when he departed the United States pursuant to a grant of voluntary departure. Based on this

history, the applicant accumulated unlawful presence from September 14, 1999, the day after his authorized stay in the United States expired until September 23, 2004, the date he departed the United States pursuant to a grant of voluntary departure. As the applicant accrued unlawful presence of more than one year and is seeking admission within ten years of his 2004 departure, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act and must seek a 212(a)(9)(B)(v) waiver of inadmissibility.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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. In this case, the applicant's spouse is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (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 AAO now turns to the question of whether the applicant in the present case has established that a qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, the applicant’s spouse states that she is experiencing emotional hardship as a result of separation from the applicant. In her June 6, 2009 statement, the applicant indicates that she has been on three different medications for her mental health problems, that the medications have not alleviated her symptoms, that she had severe reaction to one of the medications, and that she is following up with her psychiatrist to address her medication problems. In an earlier statement, dated February 5, 2009, the applicant’s spouse indicated that separation from the applicant had caused her heartache, anxiety and depression, and that she sometimes found it difficult to get out of bed. She stated that her depression had affected her relationship with her children and her job performance.

The applicant’s spouse also contends that separation from the applicant has caused her financial hardship, that her standard of living has decreased, and that the financial support she was receiving from the Veteran’s Administration was decreased following her marriage to the applicant and a decrease in the number of her dependents. The applicant’s spouse indicates that her home is in complete disrepair, that she has no heat, that she cannot not afford to fix the electricity and that her

quality of life and that of her remaining daughter has gone down to the point that they may not have livable quarters.

In support of the applicant's spouse's claims that she is suffering from depression and anxiety, and that the symptoms of her depression has affected her ability to manage her daily activities, the record includes two evaluations prepared by psychologists, [REDACTED] and [REDACTED] as well as two medical statements from [REDACTED] and [REDACTED]

In a statement dated April 28, 2009, [REDACTED] refers to an October 2, 2008 letter, relating to the applicant's spouse's mental health condition, and states that he has continued to work with her regarding the depressive tendencies that have resulted from her inability to resolve the applicant's immigration problems. [REDACTED] reports that although the applicant's spouse has been prescribed medications for her depression and anxiety, the medications have not been effective due to her decompensation into Major Depressive Disorder, Recurrent (296.32) per the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision [REDACTED]. He states that psychotherapy alone is not sufficient to deal with the severity of her depression and that he has referred the applicant's spouse back to her physician for an increase in her current medication or a change in medication. [REDACTED] observes that the applicant's spouse is becoming increasingly distraught and that her symptoms include a depressed mood most of the day; a marked loss of interest at home and work; incidents of both insomnia and hypersomnia, which have disrupted her reporting to work on time and affected her ability to work around her home; daily fatigue or loss of energy to the point of a severe deterioration of housekeeping tasks; and a diminished ability to think or concentrate, causing her to miss work and receiving verbal reprimand from her employer. [REDACTED] indicates that the applicant's spouse is beginning to lose focus in her schooling, that she has dropped a grade level in her class performance and that failing to complete her studies will affect her continued employment. [REDACTED] concludes that the applicant's spouse's separation from the applicant continues to exacerbate her depression and his presence would reduce her emotional and environmental stressors and allow her to deal better with her depression.

In a report dated June 3, 2009, [REDACTED] states that she interviewed and evaluated the applicant's spouse in order to begin psychological treatment. [REDACTED] finds that the applicant's spouse suffers from Major Depressive Disorder, Recurrent, Moderate; and [REDACTED]. She indicates that the applicant's spouse has a history of depressed mood, insomnia, lack of appetite, difficulty focusing and concentrating, crying jags, lack of motivation and feelings of hopelessness. [REDACTED] further indicates that these symptoms have become worse over the preceding year and that the applicant's spouse is experiencing difficulty managing her daily activities including work. [REDACTED] further indicates that the applicant's spouse is on [REDACTED] to address the symptoms of her depression.

[REDACTED] indicates in a statement dated May 1, 2009, that the applicant's spouse has been his patient for years, that she has a known history of depression, and that despite being on medication, her depression has worsened. [REDACTED] reports that the applicant's spouse has concentration problems at work; night sweats; diminished appetite; and ongoing abdominal pain and gastritis. [REDACTED] indicates that the applicant's spouse is taking [REDACTED] and Ability for her depression.

In a statement dated June 3, 2009, [REDACTED] states that the applicant's spouse was referred to him by her primary care physician for diarrhea and abdominal pain and that she has been under his care since March 2009. He indicates that an upper endoscopy revealed evidence of reflux esophagitis and inflammation in her small intestine. [REDACTED] reports that the inflammation in her small intestine is consistent with NSAIDS induced injury and prescribed acid suppressive therapy for her.

Statements from friends and co-workers attest to the hardship the applicant's spouse is experiencing without the applicant. [REDACTED] states that she has known the applicant's spouse for more than 26 years, that her health is poor, that she is on an antidepressant, and that she is not eating well because of stress from her job and her separation from the applicant. [REDACTED] states that he has known the applicant's spouse since 1991, and that her prolonged separation from the applicant is beginning to take a toll on her, that she is having medical problems and that her depression is getting worse. [REDACTED] states that she has known the applicant's spouse for more than 20 years and that more than two years of separation have taken a toll on her health, and that she is very sad and depressed. [REDACTED]

[REDACTED] states that he has known the applicant's spouse for more than ten years. [REDACTED] indicates that he interviewed the applicant's spouse in relation to her former spouse's suicide, and that he is familiar with her psychiatric problems resulting from secondary trauma to her and her children from her former spouse's mental illness. [REDACTED] indicates that her marriage to the applicant brought some stability into her life but that the denial of the applicant's visa has caused her a great deal of stress, depression and serious medical problems.

In support of the applicant's spouse's assertions of financial hardships, the record contains a letter from [REDACTED] Attorney at Law, dated June 3, 2009. [REDACTED] states that he worked with the applicant's spouse in September 2006 to file for a Chapter 13 Bankruptcy because at that time she had enough income to make the required payments and did not want to lose her home. [REDACTED] goes on to say that the applicant's spouse subsequently converted to a Chapter 7 Bankruptcy due to the loss of income from the Veteran's Administration and Social Security entitlement when she married the applicant in 2007, and two of her children turned 18 years of age. The record contains the applicant's spouse's tax return for 2008, indicating her income for that year was \$58,689 and a statement from her daughter, in which her daughter asserts that her mother's income is "small" and that they are struggling to survive without the applicant's assistance.

Although the AAO does not find the record to provide sufficient evidence to establish the applicant's spouse's financial situation, we note that the psychological evaluations of the applicant's spouse, document a decline in her emotional and mental health, which is affecting her ability to function in both her private and professional lives. We also note that the applicant's spouse is on antidepressant medications. As a result, when the declining emotional and mental health of the applicant's spouse and the hardships routinely created by the separation of families are considered in the aggregate, the AAO finds that the applicant's spouse would experience extreme hardship if she continues to reside in the United States without the applicant.

The applicant has not, however, addressed what hardships his spouse would face if she relocates to Morocco to live with him. In the absence of clear assertions from the applicant, the AAO may not speculate as to what hardships if any his spouse would encounter in Morocco. Therefore we find that

the record does not demonstrate that the applicant's spouse would experience hardship upon relocation to Morocco.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if separated from 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. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as 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 upon relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

The record does not establish that a qualifying relative would suffer extreme hardship as a result of the applicant's inadmissibility. Therefore, the applicant has failed to establish eligibility for a waiver under section 212(a)(9)(B)(v) 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(a)(9)(B)(v) 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 will be dismissed.