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

U.S. Citizenship and Immigration Services

[redacted]

#6

DATE: JUL 25 2012 OFFICE: ROME, ITALY File: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds 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:

[redacted]

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) and the Form I-212, Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212), were concurrently denied by the Field Office Director, Rome, Italy and both are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the applications will be approved.

The record reflects that the applicant is a native and citizen of Morocco who entered the United States on June 24, 2005 and was admitted as a temporary visitor until December 23, 2005. The applicant remained in the United States beyond his authorized period of stay before departing voluntarily on July 7, 2007. The applicant accrued unlawful presence in the United States from December 24, 2005 to July 7, 2007, a period in excess of one year. He was thus found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of 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 seeks a waiver of inadmissibility under 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 with his U.S. citizen spouse.

The applicant was found to be additionally inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien ordered removed under section 240 or any other provision of law. The applicant seeks permission to reapply for admission into the United States within 10 years of his departure under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii).

The record reflects that on November 28, 2007, an Immigration Judge entered an order of removal against the applicant, in absentia, after the applicant did not appear in court because he had already departed to Morocco to tend to a family medical emergency. The Field Office Director determined that the applicant demonstrated good cause for his failure to appear, and thus found that the applicant is not inadmissible under section 212(a)(6)(B) of the Act.

The Field Office Director determined that the applicant had failed to establish extreme hardship to a qualifying relative. The Field Office Director noted that approving the Form I-212 would serve no purpose as the Form I-601 had been denied. As noted above, the applicant's Form I-601 and Form I-212 applications were concurrently denied. *See Decision of the Field Office Director,* dated June 16, 2010. However, because the applicant filed individual Forms I-290B, Notice of Appeal or Motion, appealing the denials of the Form I-601 and the Form I-212 respectively, the AAO has issued individual decisions related thereto.

The record contains, but is not limited to: Forms I-290B and counsel's letters; hardship letters; the applicant's letters; numerous supporting letters; psychological records and medical records for the applicant's spouse and her mother and father; financial records; employment records, certificates, and newspaper articles about the applicant's spouse and her service to the community; Morocco country-conditions documents; birth and marriage records and family photos; and records pertaining to the applicant's inadmissibilities, removal proceedings, and demonstration of good cause. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9) of the Act provides:

(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.

...

(v) Waiver.-The Attorney General 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

A waiver of inadmissibility under section 212(9)(B)(v) 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 can be considered only insofar as it results in hardship to a qualifying relative. In the present 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 USCIS 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 record reflects that the applicant's spouse is a 45-year-old native and citizen of the United States who has been married to the applicant since January 2006. She explains that though they are from different countries, cultures and religions she and the applicant fell in love after meeting in a karate dojo and have discovered they have far more in common than she could have ever imagined. The applicant's spouse explains that she has a 25-year-old son from a prior marriage to whom she is extremely close and who she supports both financially and emotionally. Corroborating letters from her son have been submitted. The applicant himself has two minor children, ages 9 and 10, who live with their mother in Morocco.

The applicant's spouse indicates that she has suffered tremendous stress, anxiety, feelings of hopelessness, depression, and panic attacks as a result of separation from the applicant. [redacted] diagnoses the applicant's spouse with Adjustment Disorder and Panic Disorder, noting that she also suffers related physiological symptoms including palpitations, pounding heart or accelerated heart rate, sweating, trembling or shaking, shortness of breath, sensations of choking and smothering, chest pain, nausea, dizziness, paresthesisas, chills and hot flushes. Notes from an office visit to [redacted] at the [redacted] on December 9, 2009 reveal a diagnosis of Anxiety and Depression as well as the dispensing of Lexapro samples. The applicant's spouse explains that she further suffers a serious medical condition called Laryngospasms or Vocal Cord Dysfunction, which is a spasmodic closing of the larynx which causes the total inability to breathe air into or out of one's lungs during an attack. She states that such attacks are brought on by severe stress and anxiety which she has suffered more often since being separated from her husband. Corroborating medical evidence is contained in the record. The applicant's spouse describes visiting her husband in Morocco on three occasions. She explains that being in a country so different from her own where she does not speak or understand the languages and is perceived as a foreign Christian woman in a patriarchal Islamic society, has caused her to suffer a number of severe panic attacks when her husband had to leave her alone even for short periods of time.

The applicant's spouse writes that as a school teacher, she is faced each summer with either taking on a second job to pay her mounting bills or using the time to travel to Morocco to visit her husband which has resulted in her going further into debt. She states that choosing the latter has left her home in disrepair including the presence of a driveway sinkhole, dilapidated porch and roof leaks, among other areas in desperate need of repair. Photographs demonstrating the house's condition have been submitted in the record. The applicant's spouse states that while she is generally able to meet her ordinary expenses, she has no savings, stocks, bonds, certificates of deposit or other assets and even has difficulty paying her doctor bills.

The AAO has considered cumulatively all assertions of separation-related hardship to the applicant's spouse including her significant emotional/psychological conditions, and the impact these have had on her physical health; her serious medical conditions which are exacerbated by increased stress and anxiety; the significant physical distance between the applicant's spouse and her husband while he is in Morocco and the expense involved in visiting him there; and the overall "financial burden of trying to live together but separate" that she describes. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship due to separation from the applicant.

Addressing relocation-related hardship, the applicant's spouse asserts that she would be devastated to live in a foreign land where she is unable to speak the language, unable to work as a teacher on account of the language barrier and not having proper certifications, unable to access her religious community and freely practice her religion because there are no Unitarian churches in the country, and unable to access necessary medical and psychological healthcare on which she relies. She asserts that while only visiting Morocco she was totally dependent on her husband to translate every conversation – even with his own family members, she suffered several panic attacks when he had to leave her side only briefly, and her Laryngospasms condition is triggered not only by

severe stress and anxiety which she will certainly suffer, but by respiratory infections and pollution which documentary evidence submitted in the record shows is prevalent in Morocco. The applicant's spouse expresses great concern that Morocco is a male-dominated Islamic society and culture where she as a foreign American Christian woman married to a Muslim Moroccan will face social ostracizing in general and perhaps even violent attack by extremist elements. In addition to the numerous country-conditions documents submitted in the record, the AAO has reviewed the current U.S. State Department's *Morocco: Country Specific Information*, dated December 16, 2011. The report warns that the "potential for terrorist violence against U.S. interests and citizens remains high in Morocco"; crime "is a serious concern, particularly in the major cities and tourist areas" and "women walking alone in certain areas of cities and rural areas are particularly vulnerable to assault by men"; Islam is the official religion in Morocco and "U.S. citizens have been arrested, detained, and/or expelled for discussing or trying to engage Moroccans in debate about Christianity." The report also warns that while adequate medical care is available in Morocco's largest cities, "specialized care or treatment may not be available."

The applicant's spouse maintains that she is 45-years-old and has lived all her life in the United States where she is extremely close to her elderly parents and her only son. She explains that both parents suffer a number of serious medical conditions and that she is their primary caregiver. Letters from her mother and father as well as voluminous medical records have been submitted in corroboration. The applicant's spouse details how she raised and supported her son, Shane, entirely alone because of his father's penchant for abuse, drug-addiction and crime. Recent letters from Shane as well as others he prepared as a child demonstrate the extremely close bond between mother and son and Shane's love for the applicant and the joy and stability he has brought to his mother's life and his own. The record also shows that Shane resides with the applicant's spouse who supports him financially and emotionally. The record is additionally replete with documentary evidence of the applicant's spouse's extensive community involvement and selfless service over a period of decades, all of what which she indicates will be lost in the event of relocation to Morocco.

The AAO has considered cumulatively all assertions of relocation-related hardship to the applicant's spouse including adjustment to a country and culture so different from her own where she has never lived and does not speak the languages; her safety concerns as a foreign American Christian woman married to a Muslim man in a patriarchal Islamic society; her significant, psychological/emotional and medical/physical conditions and the laryngospasm and panic attacks she has already suffered when only visiting Morocco; the lack of comparable medical care and facilities in the country and her inability to communicate with treating healthcare professionals; her close family and community ties to the United States where she has resided all her life; separation from her elderly mother and father, both of whom suffer significant health conditions and for whom she is the primary caregiver; separation from her young adult son with whom she enjoys an extremely close relationship, has raised alone, provides a home for, and supports financially and emotionally; her longtime U.S. home ownership and employment and the loss of employment, employment-related benefits, and opportunity to teach as she does not have the proper foreign certificates nor does she speak Arabic or French; and her economic, employment, health-related, religious-practice/freedom, and safety concerns in Morocco. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S.

citizen spouse would suffer extreme hardship were she to relocate to Morocco to be with the applicant.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

The AAO notes that *Matter of Marin*, 16 I & N Dec. 581 (BIA 1978), involving a section 212(c) waiver, is used in waiver cases as guidance for balancing favorable and unfavorable factors and this cross application of standards is supported by the Board of Immigration Appeals (BIA). In *Matter of Mendez-Moralez*, the BIA, assessing the exercise of discretion under section 212(h) of the Act, stated:

> We find this use of *Matter of Marin, supra*, as a general guide to be appropriate. For the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. *Id.* However, our reference to *Matter of Marin, supra,* is only for the purpose of the approach taken in that case regarding the balancing of favorable and unfavorable factors within the context of the relief being sought under section 212(h)(1)(B) of the Act. *See, e.g., Palmer v. INS*, 4 F.3d 482 (7th Cir.1993) (balancing of discretionary factors under section 212(h)). We find this guidance to be helpful and applicable, given that both forms of relief address the question of whether aliens with criminal records should be admitted to the United States and allowed to reside in this country permanently.

Matter of Mendez-Moralez at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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)

Id. at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in the present case include extreme hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; the applicant's significant community ties and numerous attestations by others to his good moral character and essential presence in the community; his U.S. home ownership; the payment of taxes; and apparent lack of a criminal record. The unfavorable factors are the applicant's immigration violations including the overstay of his temporary nonimmigrant visa; failure to appear for a removal proceeding – albeit for good cause shown; and his periods of unauthorized presence and employment in the United States.

Although the applicant's violations of immigration law are significant and cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, pursuant to section 212(a)(9)(B)(v) of the Act, the AAO finds that a favorable exercise of discretion is warranted

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 the same decision. The Form I-212 was denied solely based on the denial of the Form I-601. As the AAO has now found the applicant eligible for a waiver of inadmissibility, it will withdraw the Field Office Director's decision on the Form I-212 and render a new and separate decision.

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 applications are approved.