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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

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DATE: **MAY 18 2012** OFFICE: ROME, ITALY

FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B) and Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Tunisia 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 readmission within 10 years of his last departure from the United States. He also indicates he is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure a benefit under the Act through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. Citizen spouse and child.

The Field Office Director concluded that the applicant failed to demonstrate extreme hardship to a qualifying relative upon separation and denied the application accordingly. *See Decision of Field Office Director* dated December 28, 2009.

On appeal, counsel for the applicant submits briefs in support, a statement from the applicant's spouse, documentation of psychological difficulties, copies of correspondence with USCIS, articles on country conditions in Tunisia, and a letter from the spouse's friend. In the brief, counsel indicates that the applicant's spouse experiences psychological hardship given the present separation from the applicant, as well as physical and financial hardship. Counsel adds that the applicant's spouse would experience extreme hardship if she relocated to Tunisia because of the difficulties she experienced when she tried to live there in 2004. Counsel contends that the applicant merits a favorable exercise of discretion.

The record includes, but is not limited to, the documents listed above, statements from the applicant and his spouse, documentation of removal and criminal proceedings, evidence of birth, marriage, divorce, residence, and citizenship, medical records, financial documents, educational records, letters from friends, family, employers, and the community, police clearance certificates, other applications and petitions filed on behalf of the applicant, articles on country conditions in Tunisia, and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9) of the Act provides, 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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

....

(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.

The record reflects that the applicant was admitted to the United States on December 13, 1991 pursuant to a B-2 nonimmigrant visa. The applicant remained past June 12, 1992, the date of his authorized stay, and filed a Form I-485 Application to Register Permanent Residence or Adjust Status on July 27, 2000. The applicant was removed from the United States on June 14, 2004. The applicant has therefore accrued more than one year of unlawful presence, from April 1, 1997, the date the unlawful presence provisions became effective, until July 27, 2000. Inadmissibility is not contested on appeal. The applicant is therefore inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act, and requires a waiver under section 212(a)(9)(B)(v) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen spouse.

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.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [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.

In the present case, the record reflects that the applicant admitted in a written statement that he made material misrepresentations with respect to his previous marriage, omitted his alien

registration number, and failed to disclose his order of removal in immigration applications. The applicant admits that he is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure a benefit under the Act through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen spouse.

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 spouse asserts that she experiences financial difficulties given the present separation from the applicant. She explains that she has had trouble affording the long distance phone calls to Tunisia, and that her income as a legal assistant is not enough to meet her obligations, which include financial assistance for the applicant as well as child care for their son. A letter from her employer, who is also counsel for the applicant, states that she earns \$460 a week as an administrative assistant, and the spouse indicates that she has medical insurance through her employer. Copies of expenses including monthly rent payments, travel expenses, child care payments, money transfers, and other household expenses are present in the file.

She adds that she suffers from psychological difficulties without the applicant. She indicates that she is depressed and is taking Zoloft for treatment. A licensed clinical social worker opines that she is in a constant state of depression, suffers from insomnia and fatigue, and struggles being the primary emotional and financial caretaker of their son due to these issues. The spouse's treating physician indicates that she has hypothyroidism, arthritis, and mixed connective tissue disease, which result in fatigue and difficulty functioning properly.

The applicant's spouse moreover claims that she would experience extreme hardship upon relocation to Tunisia. She states that she and the child tried to live there in 2004, but she was unable to do so for long given the poor living conditions, her need for good medical care, and the fact that their child got sick due to food poisoning. Furthermore, the spouse states that she was unable to communicate with people because she does not know French or Arabic, and that the chances of her finding employment in Tunisia are small. She asserts that she then tried to live in Germany, but was unable to do so because no employer would sponsor her and she ran out of money. Counsel contends that the applicant's spouse has numerous family ties in the United States, and none in Tunisia besides the applicant.

Counsel and the applicant's spouse contend that the spouse experiences financial difficulties without the applicant present, and submit evidence of income and household expenses in support. However, the record is unclear on whether the applicant would be able to alleviate this financial hardship if he were able to reside in the United States. In an earlier statement, the applicant reveals that due to a medical condition, he is unable to maintain a full-time job. *Statement of the applicant*, May 23, 2002. There is no explanation on what this condition is, or whether it

continues to affect his ability to maintain employment. Moreover, the applicant's DS230 forms, dated September 17, 2009, indicate that he has been unemployed for at least 10 years, while a 2009 police clearance certificate from Tunisia describes his occupation as a "daily labourer." Given this contradictory evidence of record with respect to the applicant's employment and consequent ability to alleviate financial difficulties, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The applicant's physician states that the applicant has hypothyroidism, arthritis, and connective tissue disease. However, the physician does not discuss the exact nature and severity of these conditions and furthermore fails to provide a description of any treatment or family assistance needed. Without this, the AAO is not in the position to reach conclusions concerning the severity of a medical condition or the treatment needed.

The record reflects that the applicant's spouse experiences some emotional and psychological difficulties without the applicant present. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant remains in Tunisia without his spouse.

The record does contain evidence of extreme hardship upon relocation to Tunisia. The record reflects that the applicant's spouse was born in the United States, and does not know Arabic or French. Furthermore, the applicant's spouse has family ties in the United States, and none in Tunisia except for the applicant. The AAO also notes that the applicant's spouse and child tried to live in Tunisia in 2004, and were unable to do so for more than four months given the living conditions and cultural differences. In that the record contains sufficient evidence to establish the cultural, familial, and other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO finds that the applicant's spouse would experience extreme hardship if the waiver application is denied and she relocated to Tunisia to reside with 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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *also cf. 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 in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under sections 212(a)(9)(B)(v) and 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for a waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.