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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

Date: APR 05 2013 Office: NAIROBI, KENYA 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 (the Act), 8 U.S.C. § 1182(a)(9)(B)(v) and Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

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,

Ellen C. Johnson

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The I-601 Application for Waiver of Grounds of Inadmissibility (Form I-601) and the Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) were denied by the Field Office Director, Nairobi, Kenya, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, and the underlying applications will be approved.

The record reflects that the applicant is a native and citizen of the Republic of the Congo (Congo) 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 ten years of his last departure from the United States. The applicant is also inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as he was removed from the United States on March 30, 2008. He seeks permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(iii), as well as 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 with his U.S. Citizen spouse.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative given his inadmissibility and denied the Form I-601 application accordingly. *Decision of the Field Office Director*, dated January 31, 2011. The Form I-212 application was denied in the same decision as a matter of discretion. *Id.*

The AAO concluded that, although the applicant had shown his spouse suffered extreme hardship given the present separation, there were no assertions or evidence on hardship experienced upon relocation to Congo, and consequently dismissed the appeal. *See AAO Decision,* December 8, 2012.

On motion, counsel submits letters from the applicant's spouse and her mother, as well as evidence on country conditions in the Congo. The spouse contends in her letter that relocating to the Congo would entail extreme hardship because she does not know any relevant languages, and she would suffer financial, family and safety-related, and emotional difficulties there.

The record includes, but is not limited to, the documents listed above, statements from the applicant's spouse, letters of support, medical documents for the applicant's wife, financial documents, photographs, country-conditions documents on Congo that accompanied the applicant's asylum application, and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered in arriving at a decision on the motion.

Section 212(a)(9) of the Act provides, in pertinent part:

> (A) Certain aliens previously removed.-
>
> (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such

removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(ii) Other aliens.-Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii)Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Secretary has consented to the alien's reapplying for admission.

The record reflects that the applicant was admitted to the United States on April 2, 1997 in B-1/B-2 nonimmigrant status. He was placed into removal proceedings on November 20, 2000, and he was ordered removed under section 240 of the Act by an immigration judge on August 12, 2002. The applicant's order of removal was affirmed by the Board of Immigration Appeals (BIA) on December 30, 2003, and a Petition for Review was denied by the Sixth Circuit Court of Appeals on February 10, 2005. The applicant was removed from the United States on March 30, 2008. He is therefore inadmissible under section 212(a)(9)(A)(ii) of the Act for a period of 10 years after the date of his last departure and requires permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

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.

. . . .

(iii) Exceptions.-

. . . .

(II) Asylees.-No period of time in which an alien has a bona fide application for asylum pending under section 208 shall be taken into account in determining the period of unlawful presence in the United States under clause (i) unless the alien during such period was employed without authorization in the United States.

. . . .

(v) Waiver.-The [Secretary] 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 [Secretary] 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.

The AAO found on appeal that the applicant accrued unlawful presence from July 22, 2005, when his Form I-485 Application to Register Permanent Residence or Adjust Status was denied, until March 30, 2008 when he was removed from the United States. Inadmissibility is not contested on motion. The AAO therefore affirms that the applicant is 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.

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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 concluded on appeal that the applicant had established his U.S. Citizen spouse experienced extreme hardship given the present separation. The record does not contain any evidence suggesting this finding should be overturned. The AAO therefore affirms that the applicant's spouse would experience extreme hardship in the event of continued separation from the applicant.

Previously, the applicant's spouse failed to make any claims or submit supporting evidence to demonstrate she would additionally suffer extreme hardship upon relocation to Congo. On motion, the spouse asserts she is employed in the United States so she can support herself and the applicant in Congo. She states that without relevant language skills, she will have trouble communicating and she would be unable to find employment in Congo, especially in light of an unfavorable economic climate. The spouse adds that her medical conditions, discussed on appeal, require treatment and medications which are not available in Congo. She asserts she would consequently suffer hardship due to poor health there, and she may also be subject to other diseases such as AIDS, tuberculosis, malaria, and dysentery. The spouse moreover claims she would have to leave her elderly parents, who she takes care of, in the

United States. The spouse's mother indicates in a letter that she has diabetes and heart problems, and that the spouse lives with and looks after her and the spouse's father. Articles on country conditions in Congo are submitted in support.

The AAO finds that the applicant has demonstrated his spouse would experience extreme hardship upon relocation to Congo. The record reflects that the applicant's spouse was born in the United States, and has no ties to Congo aside from the applicant. The applicant has further established that his spouse has family and community ties in the United States, which she would have to leave upon relocation to Congo. Moreover, the record reflects that the spouse, with her English language skills, would have trouble communicating in Congo, where people speak French, and Lingala, Kikongo, and Kituba. Evidence of record demonstrates that the applicant's spouse will also have difficulty obtaining medication and treatment for her depressive disorder, adjustment disorder, anemia, and hypertension, given the medical facilities available in that country.

In light of the evidence of record, the AAO finds the applicant has established that his spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that she would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Congo.

Considered in the aggregate, the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied.

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 unfavorable factors include the applicant's unlawful presence in the United States, as well as evidence that he was employed without authorization. The favorable factors include the extreme hardship to the applicant's spouse, lack of a criminal history, and evidence of good moral character as stated in letters from family and friends.

Although the applicant's violations of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the I-601 waiver application will be approved.

The AAO notes that the Field Office Director denied the applicant's Form I-212 Application 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 under section 212(a)(9)(B)(v) of the Act, it will withdraw the Field Office Director's decision on the Form I-212 and render a new decision.

A grant of permission to reapply for admission is a discretionary decision based on the weighing of negative and positive factors. The AAO found that the applicant warrants a favorable exercise of discretion related to the adjudication of the Form I-601. For the reasons stated above, the AAO finds that the applicant's Form I-212 should also be granted as a matter of discretion.

ORDER: The motion is granted, and the underlying I-601 and I-212 applications are approved.