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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: MAR 07 2013 OFFICE: JOHANNESBURG, S. AFRICA FILE: [redacted]

IN RE: APPLICANT: [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)

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.

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 in accordance with the instructions on 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Johannesburg, South Africa, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of South Africa 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. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. Citizen fiancée.

The Field Office Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative in the event of continued separation and denied the application accordingly. *See Decision of Field Office Director* dated September 30, 2011.

On appeal, counsel for the applicant contends the Field Office Director denied the applicant's waiver application without issuing an RFE or a NOID contrary to USCIS procedure. Counsel further asserts that the fiancée has demonstrated that her emotional hardship given the present separation from the applicant is extreme, and that the applicant merits a favorable exercise of discretion.

The record includes, but is not limited to, statements from the applicant and his fiancée, evidence of birth, marriage, residence, and citizenship, educational and employment records, letters from family and friends, documentation on country conditions in South Africa, other applications and petitions, articles on physical therapists, copies of unpublished decisions and policy statements, 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.
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> (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 as a nonimmigrant worker on March 25, 2006, and was allowed to remain until December 1, 2006. He was granted an extension of stay until September 30, 2007, but remained until April 6, 2009 when he returned to South Africa. Inadmissibility is not contested on appeal. The AAO therefore concludes that the applicant accrued more than one year of unlawful presence, from October 1, 2007 to April 6, 2009, and is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act until April 2019. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen fiancée.

Counsel asserts in the brief that the Field Office Director should have issued a Notice of Intent to Deny or a Request for Evidence before denying the waiver application so the applicant could supplement the record. Without addressing the merits of counsel's contentions, the AAO notes that counsel and the applicant have had ample opportunity to ascertain the legal requirements for a waiver of inadmissibility and to submit evidence. Thus, the AAO will adjudicate the applicant's appeal based on the present record.

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 applicant's fiancée describes the emotional impact of continued separation from the applicant. She explains that she met the applicant a week before he left the United States in March 2009, and they forged a strong emotional connection. The fiancée states they talked on the phone and on Skype after he left, and she visited him in South Africa in December 2009 and in August 2010. She contends she tries not to let her unhappiness affect her everyday life, so she does not cry constantly, lose or gain weight, or perform poorly in school or work, but she indicates she is deeply affected emotionally. The fiancée asserts she feels constantly lonely without the applicant, cries herself to sleep, and is deeply affected by the thought that she may never be able to live with the applicant in the United States. Counsel contends in his initial brief that the fiancée is

exhibiting signs of depression and anxiety. Letter from family and friends contain observations of the fiancée's emotional state. The fiancée's brother indicates in his letter that during one Christmas vacation, the fiancée would not laugh as much, she would often cry for what seemed like no reason, and has exhibited other signs of stress since being separated from the applicant. An article written on the effects of migration on family members remaining at home is submitted, which discusses the psychological implications, such as diminished support networks, of separation between family members.

The applicant's fiancée moreover indicates that she worries about the applicant's safety in South Africa given the adverse country conditions. Articles on violence, crime, and the economy in South Africa are submitted in support. The fiancée asserts she has had to continue with her life in the United States, earning a doctorate degree in physical therapy in 2011, and obtaining a physical therapist job in North Dakota where the demand for such jobs is high.

The Field Office Director found the applicant had submitted sufficient evidence to establish that his fiancée would experience extreme hardship upon relocation to South Africa. The record does not contain indications that this finding should be overturned. The AAO therefore affirms that the applicant has demonstrated his qualifying relative would experience extreme hardship in the event of relocation to South Africa.

The record demonstrates the applicant's fiancée would suffer emotional difficulties upon continued separation from the applicant. The applicant has submitted several letters from family and friends which describe the fiancée's outward signs of sadness and anxiety, and the fiancée herself has indicated in a written statement that separation from the applicant has changed her emotional state. However, the record also reflects that the fiancée has been able to earn her doctorate degree in physical therapy from the and that she has maintained her academic performance throughout the separation. Documentation of record also does not indicate that the separation has negatively impacted the fiancée's ability to earn $50,000 to $130,000 a year as an entry level physical therapist in North Dakota. In addition to her academic and professional life, there is no assertion or evidence to show that the separation from the applicant has adversely affected the fiancée's relationships with her friends and family, or her physical health. The fiancée states that she has been able to maintain her weight, and that she has continued to perform well in school and work. While there is sufficient evidence of record to show that the fiancée suffers emotionally due to the present separation, evidence of record does not demonstrate that the emotional or psychological impact has had documented, adverse effects on other aspects of the fiancée's life.

Furthermore, although the fiancée states she worries about the applicant's safety in South Africa, and submits articles on violence in the country, there is no assertion or supporting evidence to show that the applicant or his family have been targeted for violence, or that they have been victims of crime in that country.[1] Without a connection between country conditions and threats to

[1] The AAO further notes that the U.S. Department of State has not issued a current travel warning for South Africa.

the applicant's safety, the AAO is unable to evaluate the objective nature and severity of the fiancée's concern.

Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(a)(9)(B)(v) of the Act, be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See* INS v. Jong Ha Wang, *450 U.S. 139 (1981)* (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

While the AAO acknowledges that the applicant's fiancée 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 emotional or other impacts of separation on the applicant's fiancée 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 South Africa without his fiancée.

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 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 fiancée as required under section 212(a)(9)(B)(v) 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 section 212(a)(9)(B)(v) 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.