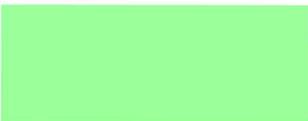


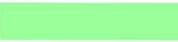


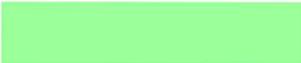
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DATE: **MAR 20 2013**

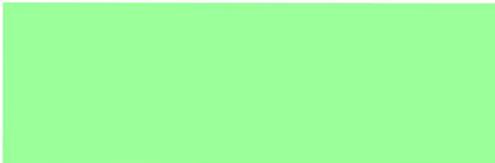
Office: ALBANY FIELD OFFICE

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v), and 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 request 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 Albany Field Office Director and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native 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 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 spouse.

The Field Office Director concluded that the applicant had failed to demonstrate extreme hardship to his U.S. citizen spouse and denied the application accordingly. *See Decision of Field Office Director*, dated December 30, 2010.

On appeal, counsel for the applicant states that the Field Office Director erred in considering the hardship factors individually rather than in the aggregate. Counsel asserts that the qualifying spouse will suffer financial and emotional hardship if the waiver is denied, and that her disabled son will suffer hardship as well. Counsel contends that when considered together, these factors demonstrate extreme hardship to the qualifying spouse. *Counsel's Brief*.

The record includes, but is not limited to: statements from the qualifying spouse and her children; medical records; and a psychoeducational evaluation and special education records regarding the qualifying spouse's son. 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.

....

(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.

In the present case, the record reflects that the applicant was admitted to the United States on October 18, 1997 as a temporary visitor for business with authorization to remain until November 17, 1997. He remained in the United States until January 7, 2000. Therefore, the applicant accrued one year or more of unlawful presence and is inadmissible under section 212(a)(9)(B)(i) of the Act for a period of 10 years from his departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

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.

The record also reflects that the applicant was paroled into the United States on February 17, 2000 and that he filed a Form I-485, Application to Register Permanent Residence or Adjust Status, on August 14, 2001. In that application, he indicated that he was married to a U.S. citizen, [REDACTED] and that his eligibility to adjust status was based on a pending petition. During an interview regarding his application to adjust status, the applicant admitted that he had never been married to a person named [REDACTED] and that she had never filed a petition on his behalf. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission through fraud or misrepresentation. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act as the spouse of a U.S. citizen. In order to qualify for this waiver, however,

he must first prove that the refusal of his admission to the United States would result in extreme hardship to his qualifying relative. Hardship to the applicant or the applicant's U.S. citizen stepchildren is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's spouse. 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-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 of Immigration Appeals (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 U.S. 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. INS*, 138 F.3d 1292, 1293 (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.

On appeal, the qualifying spouse states that the applicant has provided her with emotional support after a series of losses in her life. She claims that she plans to see a psychiatrist regarding the possibility that the applicant will be forced to depart the United States. The qualifying spouse also notes that her son, [REDACTED] has been diagnosed with mental retardation and a seizure disorder. She states that he suffered severe seizures at school beginning in 2003 and was taken to the emergency room. She states that [REDACTED] seizures are difficult to control but that they have become less frequent since [REDACTED] turned 17 and since the applicant became part of the family. The qualifying spouse believes that she cannot leave [REDACTED] alone for long periods of time due to the likelihood that he will suffer future seizures.

The qualifying spouse also indicates that in July 2010, she was informed that she has abnormal cells in her cervix which could lead to a cancer diagnosis. Her fear that she will develop cancer has increased her stress and she states that she needs the applicant's support to deal with her diagnosis. Additionally, the qualifying spouse claims that she was recently laid off and that she has not been able to find a new job. Therefore, she asserts that the applicant is the sole provider for the qualifying spouse and her family.

The AAO finds that the qualifying spouse would suffer extreme hardship if she were to relocate to Morocco to join the applicant. The record reflects that the qualifying spouse was born and raised in the United States and that she has close ties here, including eight children. Although all of her children are adults, the qualifying spouse still plays a role in caring for her son, [REDACTED] now aged 21, who has been diagnosed with "epilepsy that has been difficult to control." *See Letter from [REDACTED] M.D.*, dated January 11, 2011. A psychoeducational report from Nicholas' school also indicates that [REDACTED] is mentally retarded and that he received special education services while in school due to the fact that he functioned at a lower grade level. *See Confidential Psychoeducational Evaluation, [REDACTED] School Psychologist*, dated

March 11, 2008. Separation from her children, particularly in light of [REDACTED] special needs, would be difficult for the qualifying spouse. Additionally, the record reflects that in July 2010, the qualifying spouse was diagnosed with a “[l]ow grade squamous intraepithelial lesion” on her cervix, requiring follow-up. *See Note from [REDACTED] MD*, dated July 15, 2010. If the qualifying spouse were to relocate to Morocco, the required follow-up for that condition might be disrupted and she would be separated from the medical providers familiar with her condition.

However, the AAO finds that the applicant has failed to demonstrate that his qualifying spouse would suffer extreme hardship if separated from the applicant. Although the qualifying spouse claims that she is [REDACTED] sole provider and that she needs the assistance of the applicant in caring for him, the record reflects that [REDACTED] father and other family members assist in his care. Medical records indicate that when [REDACTED] first began seeking medical attention for his seizures, he visited the doctor accompanied by his father and maternal aunt. *See Office Visit Report, [REDACTED] Medical Group*, dated June 2, 2004. [REDACTED] father and the qualifying spouse also attended his doctor’s visit together in 2011. *See Office Visit Report, [REDACTED] Medical Group*, dated January 11, 2011. Additionally, the psychoeducational evaluation in the record notes that [REDACTED] resided with his father during high school. *See Confidential Psychoeducational Evaluation*, dated March 11, 2008. Therefore, there is no evidence to support the claim that the qualifying spouse is [REDACTED] sole caretaker or that she needs the applicant’s assistance in fulfilling that responsibility. Additionally, although the record reflects that [REDACTED] has appreciated the applicant’s presence in his life, the evidence is insufficient to demonstrate that the applicant’s absence would create such difficulties for [REDACTED] that it would cause extreme hardship for the qualifying spouse.

Furthermore, although the qualifying spouse claims that she recently lost her job and that she and her family rely on the applicant as their sole financial provider, there is no evidence in the record to support that claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Finally, while the qualifying spouse claims that she needs the emotional support of the applicant in light of the possibility that she may have cancer, there is no evidence in the record that she has cancer or that she has received any treatment for the lesion on her cervix since July 2010. While she also claims that she plans to seek the treatment of a psychiatrist due to her stress regarding her health and the applicant’s immigration situation, there is no evidence in the record that she has done so. Therefore, even when considered in the aggregate, there is insufficient evidence to demonstrate that the qualifying spouse would suffer extreme hardship in the applicant’s absence if the waiver application were denied. *See Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996).

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.

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 an application for 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.