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U.S. Citizenship  
and Immigration  
Services

[Redacted]

Date: **MAR 27 2013** Office: ROME 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, 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*

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

(b)(6)

**DISCUSSION:** The waiver application was denied by the Field Office Director, Rome, Italy. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen 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 again seeking admission within ten years of his last departure from the United States. The record reflects that the applicant entered the United States in November 2000 as a visitor and remained beyond his authorized stay until departing in February 2009. The applicant is the spouse of a United States citizen. He seeks a waiver of inadmissibility in order to reside in the United States with his wife.

The Field Office Director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The application was denied accordingly. *See Decision of the Field Office Director* dated May 18, 2012.

On appeal counsel for the applicant claims the Field Office Director erred in finding the applicant had failed to establish extreme hardship to his spouse and placed undue weight on the fact that the applicant's spouse had gone to Morocco with the applicant following his departure from the United States. Counsel submits a brief; affidavits from the applicant and his spouse; and financial, medical and educational documents.

The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) 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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

A waiver of inadmissibility under section 212(a)(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. The applicant's wife is the only qualifying relative in this case. 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 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. *Salcido-Salcido v. INS*, 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.

On appeal counsel notes that the applicant's spouse immigrated to the United States through the diversity lottery program, became a citizen, began working and pursued a college education to improve her life. Counsel contends that the spouse has student loans in forbearance due to economic hardship and unemployment. Counsel asserts the applicant's spouse is raising her son as a single parent so it is difficult to secure gainful employment and return to school. Counsel contends that the applicant's spouse is meeting financial obligations through savings, but cannot afford to pay student loans and other debts plus her living expenses with the applicant being in Morocco, where he is relying on savings and family while paying child support to his former spouse. Counsel asserts that the spouse cannot travel to Morocco as she has been unemployed and has exhausted savings since the applicant returned to Morocco, and the applicant's income is insufficient for her airfare. Counsel contends that the spouse's emotional and physical health are spiraling downward because of stress and anxiety for which she is attending therapy sessions and taking medication, and she has been diagnosed with clinical depression and suffers headaches, back pains, and insomnia. Counsel asserts that the applicant has been alienated from his children with his first wife in the United States and that his current spouse wants to form a relationship with them but the ex-wife will not allow them to travel to Morocco and has hindered contact. Counsel asserts the applicant does not want to be separated from his son with his current spouse and would like his children to have a relationship with one another, which is not feasible unless he is in the United States. Counsel contends that the applicant's spouse tried unsuccessfully to find employment in Morocco and would have difficulty pursuing her career or earning a degree in Morocco.

In his affidavit the applicant states his first wife in the United States has cut off communication with their children and that he wants to be there to help raise them, fearing his ex-spouse cannot afford their needs. The applicant states that he does not want his son with his current spouse to grow up far from him and wants his children to share a bond, which is not possible unless he is in the United States. He further states that his family in Morocco cannot afford to support him any longer and his salary is very low.

In her affidavit the applicant's spouse writes that her psychological condition is worsening, that she is seeing a psychologist and psychiatrist for stress and anxiety, and that she has headaches, back pains, and insomnia. She states that she fears becoming suicidal and cannot function as a normal person should. She states she takes several medications to treat depression and anxiety but fears further deterioration of her health. She states her financial condition is desperate and she needs the applicant to provide basic necessities for their son. The applicant's spouse states that as she cannot pay rent she is living with family members, but cannot relocate to Morocco because of the job market and because health insurance is not available for those not working. She further states she cannot pursue her field of study in Morocco and has debt, including credit card and student loans that she will be unable to pay. She further states she cannot afford to visit the applicant, but he would be able work with his former employer in United States if he returns.

The AAO finds that the applicant has failed to establish that his qualifying spouse will suffer extreme hardship as a consequence of being separated from the applicant. Counsel and the applicant's spouse contend the spouse is in therapy and taking medication because she suffers from depression and anxiety with resulting physical health problems. Documents submitted provide no identification of the medical professional or facility associated with the report, which contains only an indiscernible signature and offers no detailed explanation of her condition from a treating physician. The evidence on record is insufficient to establish the spouse suffers from a physical or psychological condition. As the documents submitted do not contain a clear explanation of the current medical or psychological condition of the applicant's spouse, the AAO is not in the position to reach conclusions concerning her health or psychological condition.

Counsel and the applicant's spouse assert the spouse is experiencing financial hardship due to separation from the applicant and submitted student loan information for the spouse and a bank statement which does not identify the bank or the applicant as account owner. Counsel also submitted bank and employment information for the applicant from Morocco. The documentation submitted does not establish the spouse's current income, expenses, assets, and liabilities or her overall financial situation to establish that without the applicant's physical presence in the United States the applicant's spouse will experience financial hardship. Although the applicant asserts his income in Morocco is far less than it would be in the United States, it has not been established that the applicant is unable to support himself while there. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986).

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

The record also does not establish that the applicant's spouse would experience extreme hardship if she were to relocate abroad to reside with the applicant. Counsel and the applicant's spouse assert she is unable to relocate to Morocco due to a poor job market. However, the applicant's spouse is a

native of Morocco, having immigrated to the United States as an adult, and she still has substantial family ties in Morocco. Although the applicant's spouse may have difficulty finding employment and be unable to pursue a preferred educational path, this difficulty does not rise to the level of extreme hardship. Information submitted to the record describes generalized country conditions. One report notes that women in Morocco are able to receive loans and start businesses, and that there are few legal obstacles to women's participation in business and other economic activities. In the present case the applicant's spouse has completed an advanced degree program in the United States. She has not established that she does not have transferable skills she could deploy in Morocco. The record does not establish the applicant's spouse would experience extreme hardship if she were to relocate to Morocco.

The record contains references to hardship the applicant's children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship under section 212(a)(9)(B)(v) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(a)(9)(B)(v) of the Act, and hardship to the applicant's children will not be separately considered, except as it may affect the applicant's spouse. In the present case, the applicant's three children from a prior marriage live with their mother in the United States, not with the applicant's current spouse. The applicant's U.S citizen son with his current spouse is one year old and does not have social, educational or other ties to the United States such that relocating to Morocco would create a hardship to the applicant's spouse.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that she will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's spouse's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law.

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 application for waiver of grounds of inadmissibility, 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.