



U.S. Department of Justice

Immigration and Naturalization Service

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**PUBLIC COPY**

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

[REDACTED]

FILE [REDACTED] Office: Los Angeles

Date:

**FEB 14 2003**

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

IN BEHALF OF APPLICANT:

[REDACTED]

**Identifying data deleted to prevent clearly unwarranted invasion of personal privacy**

**INSTRUCTIONS:**

This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, Los Angeles, California, and a subsequent appeal was dismissed by the Associate Commissioner for Examinations. The Associate Commissioner affirmed that decision on a motion to reopen and reconsider. The matter is before the Administrative Appeals Office (AAO) on a second motion. The motion will be dismissed, and the order dismissing the appeal will be reaffirmed.

The applicant is a native of Israel and citizen of Jordan who was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant last entered the United States in September 1993 as a nonimmigrant student. The applicant married a United States citizen on October 22, 1997, in Nevada, and is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. § 1182(h), to reside with his spouse in the United States.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon his United States citizen wife and denied the application accordingly. The Associate Commissioner affirmed that decision on appeal and again on motion.

On second motion, counsel states that the decisions of the Ninth Circuit Court of Appeals must be followed. Counsel indicates that it was held in *U.S. v. Arrieta*, 224 F.3d 1076 (CA 9, 2000) that the existence of family ties in the United States is the most important factor in determining hardship. Counsel states that the hardship to the applicant's permanent resident father, sister, brother, father-in-law and mother-in-law should be considered.

It is noted that the Ninth Circuit Court of Appeals in *Carnalla-Muñoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), held that an after-acquired equity, referred to as an after-acquired family tie in *Matter of Tijam*, 22 I&N 408 (BIA 1998), need not be accorded great weight by the district director in considering discretionary weight. The applicant in the present matter entered the United States as a nonimmigrant student in 1993. The Form I-20 contained in the record indicates that he was to complete his studies by February 1995. The applicant provided no indication that his student status had been extended. He married a U.S. citizen on October 22, 1997, after expiration of his nonimmigrant student status and while he was unlawfully present in the United States. He now seeks relief based on that after-acquired equity. However, as previously noted, a consideration of the Attorney General's discretion is applicable only after extreme hardship has been established.

Although the applicant's Form G-325-A dated October 23, 1997, lists his parent's [REDACTED] address as Placentia, California, the record contains a medical report concerning his mother from the

Palestinian National Authority, Ministry of Health, indicating that his mother was scheduled for surgery in Beit Jala on June 23, 1998. The record also indicates that the applicant applied for advance parole on June 8, 1998, to travel to Israel/Jordan to visit his mother. The record contains a second application for advance parole filed on December 11, 1999, showing that the applicant requested permission to visit his family in Jordan. The record is devoid of evidence, medical or otherwise, that the applicant's parents and/or brother are residing with him in the United States, that his father is a legal permanent resident, is a diabetic and has a bad heart, or that his minor sister is having trouble adjusting to life in the United States.

The record reflects that the applicant was convicted of Petty Theft on December 12, 1994, and of Sexual Battery on July 15, 1996.

Section 212(h) of the Act provides, in part, that:-The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I),...or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien;...and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status....

Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have

committed crimes involving moral turpitude. In addition to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009, this intent was recently seen in the provisions of the Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. No. 104-132, 110 Stat. 1214, which relates to criminal aliens. Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. See *Fiallo v. Bell*, 430 U.S. 787 (1977); *Reno v. Flores*, 507 U.S. 292 (1993); *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). See also *Matter of Yeung*, 21 I&N Dec. 610, 612 (BIA 1997).

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. *Matter of Ngai*, 19 I&N Dec. 245 (Comm. 1984). "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

The issues in this matter relating to extreme hardship were thoroughly discussed by the director and the Associate Commissioner in their prior decisions. Although extreme hardship has not been established, the AAO will also weigh the favorable and unfavorable factors in this motion.

The favorable factors include the applicant's marriage, the approved visa petition and the hardship to the qualifying relative.

The unfavorable factors include the applicant's criminal record, and his unlawful presence in the United States.

The applicant's actions in this matter cannot be condoned. His equity (marriage) gained while being unlawfully present in the United States and after being convicted of a crime involving moral turpitude can be given only minimal weight. The applicant has not established by supporting evidence that the favorable factors outweigh the unfavorable ones.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) 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 order dismissing the appeal will be reaffirmed.



**ORDER:** The order of July 19, 2001, dismissing the appeal is reaffirmed.