

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

*H2*



FILE:



Office: CHICAGO, ILLINOIS

Date: JUN 16 2005

IN RE:



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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

*Robert P. Wiemann*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Interim District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is an ethnic Palestinian native of the West Bank (Israel) who formerly possessed an Israeli laissez-passer but appears to be stateless. He entered the United States and was improperly admitted as a parolee in 1986. The applicant was found to be inadmissible to the United States pursuant to § 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 is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. The applicant seeks a waiver of inadmissibility in order to reside with his wife and child in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse and child. The application was denied accordingly. On appeal, counsel asserts that the applicant's wife and child will suffer psychological and financial trauma if the applicant is removed from the United States. In support of his assertions, counsel submits a psychological report for the applicant's wife and child, medical information for the applicant, his wife, and child, country conditions information on the West Bank, employment information, and other documentation.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) states in pertinent part that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he 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.

The applicant committed the offense of unlawful acquisition and possession of food stamps On December 19, 1994, which is less than fifteen years prior to this adjudication. The applicant is therefore statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(B) of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. [REDACTED] v. *INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Counsel asserts that the applicant's wife and child would be unable to adjust to life in the West Bank, as they have no family ties there and do not speak Arabic. In her statement on appeal, the applicant's wife also asserts that she would not be able to accept the more restrictive cultural norms applicable to women in the applicant's native land. The AAO finds these assertions unpersuasive, as the record contains no documentation to establish that a move to the West Bank would require greater than usual personal adjustments of the applicant's wife and eight year old son. However, counsel has provided country conditions information indicating that the applicant's wife and son would have much greater concerns for their personal safety, freedom of movement, and medical wellbeing should they relocate to the West Bank. The record establishes that they could undergo extreme hardship if they choose to accompany the applicant to his native Ramallah in the West Bank.

Counsel also contends that the applicant's wife and son will experience extreme psychological hardship in the applicant's absence. Counsel submits a psychological evaluation performed by [REDACTED] Ph.D., based on an interview held on February 2, 2005. In her evaluation, [REDACTED] discusses the applicant's wife's

history of depression due to family problems. In fact, medical notes by [REDACTED] reflect that the applicant's wife recounted symptoms such as insomnia and having suicidal thoughts in 2001 and 2002, and that the applicant's wife was prescribed Zoloft for depression in 2002.

[REDACTED] states that the applicant's wife and son suffered from a major depressive episode while the applicant was held in immigration detention from April to July 2004. [REDACTED] writes that the applicant's wife is suffering from post-traumatic stress disorder, and his son suffers from separation anxiety disorder. [REDACTED] expresses the opinion that the applicant's departure from the United States would "almost certainly" cause his wife to "fall back into a deep depression." [REDACTED] concludes the evaluation by stating that "it is highly unlikely that either anti-depressant medication or psychotherapy will alleviate the root cause of [the applicant's wife's] problem." In addition, the medical evidence regarding the applicant's son's heart defect establishes that he suffers from a non-life-threatening condition which requires regular monitoring, and the applicant's wife suffers from health concerns, including her current pregnancy. The AAO finds that the psychological and medical evidence provides sufficient basis upon which to conclude that the applicant's wife and child will suffer emotional hardship beyond that which is normally experienced by similarly situation individuals.

In *Matter of Mendez-Moralez*, 21 I&N Dec. 296 (BIA 1996), the Board held that establishing extreme hardship and eligibility for § 212(h)(1)(B) relief does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. The Attorney General has the authority to consider all negative factors in deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant entered the United States in 1986 without a valid visa;  
The applicant engaged in unauthorized employment; and  
The applicant was convicted of a crime involving moral turpitude in 1995.

The positive factors in this case include:

The applicant assisted in an immigration investigation in 1990;  
The applicant has strong family ties to the United States, as evidenced by numerous letters from relatives;  
The applicant's wife and son would suffer extreme hardship if the applicant were removed from the United States or if they accompanied him to the West Bank;  
In his statements on the record, the applicant has taken responsibility and shown remorse for his criminal act;  
Since 1995 the applicant has had no further arrests or convictions; and  
The applicant has been continuously employed.

Although the applicant's criminal act and unlawful presence in the United States cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under § 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of

the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

**ORDER:** The appeal is sustained.