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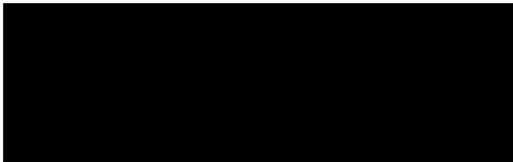
Date: MAR 26 2007

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and 8 U.S.C. § 1182(a)(9)(B)(v).

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Officer in Charge, Athens, Greece. On appeal, the Administrative Appeals Office (AAO) withdrew the decision and remanded the case back to the Officer in Charge for further consideration and action. On December 30, 2004, the Acting Officer in Charge in Athens, Greece issued a new decision, denying the Form I-601 waiver application. That decision has been certified to the AAO. The decision of the Acting Officer in Charge will be affirmed and the waiver application denied.

The applicant is a native of Latvia and a citizen of Israel who was admitted into the United States several times as a visitor for pleasure. On March 26, 2001, at the J.F.K. International Airport Port of Entry in New York, the applicant applied for admission as a visitor for pleasure. She was found inadmissible under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(7)(A)(i)(I) for being an immigrant not in possession of a valid immigrant visa or lieu document. The applicant was permitted to withdraw her application for admission and was given permission to depart the United States on the same day. On August 12, 2002, the applicant was interviewed for an immigrant visa at the Consulate Section at the American Embassy in Tel Aviv, Israel based on an approved Petition for Alien Relative (Form I-130) filed by her U.S. citizen spouse. The applicant was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for a period of one year or more and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i) for having sought to procure a nonimmigrant visa by fraud or willful misrepresentation of a material fact. She seeks waivers of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v) and 8 U.S.C. § 1182(i) in order to travel to the United States and reside with her spouse.

The Acting Officer in Charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting Officer in Charge*, dated December 30, 2004.

In his brief appealing the initial denial of the application, counsel contended that Citizenship and Immigration Services (CIS), had erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to her qualifying relative as requested for a waiver under 212(i) of the Act. *Counsel's brief*.

In support of counsel's assertions the record includes, but is not limited to, statements from the applicant's spouse; photocopies of airline tickets and boarding passes for the applicant's spouse; rental car agreements for the applicant's spouse; telephone bills; tuition receipts; medical records for the applicant; a psychological evaluation of the applicant's spouse from [REDACTED], dated July 30, 2003; and a letter from [REDACTED] licensed clinical psychologist, dated August 8, 2003, that discusses the emotional health of the applicant. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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 that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

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.

....

- (v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] 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 [Secretary] 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.

The record reflects that the applicant was admitted to the United States on September 17, 1998 with a B-2 visa valid until March 16, 1999. On August 2, 1999 the applicant applied to extend her B-2 visa. This extension was denied, and the applicant left the United States in April 2000. *Id.* The applicant accrued unlawful presence from March 17, 1999 until April 2000, the date she departed the United States and is therefore inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act. The applicant was again admitted to the United States in September 2000 for six months. *Id.* She left the United States on February 22, 2001. *Record of Sworn Statement and notes*, dated March 26, 2001. As previously noted, on March 26, 2001, the applicant again applied for admission as a visitor for pleasure and was found inadmissible under section 212(a)(7)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(7)(A)(i)(I) for being an immigrant not in possession of a valid immigrant visa or lieu document. *Id.* She withdrew her application for admission and departed the United States on the same day. *Form I-275, Withdrawal of Application for Admission/Consular Notification*. On May 8, 2001 the applicant submitted a

visa application using a different last name. *See visa application and refusal worksheet.* She also stated that she had never previously applied for a visa, nor did she have a visa that had been cancelled. *Id.* Based on the record, the AAO finds that the applicant committed a willful misrepresentation of a material fact and is therefore also inadmissible under Section 212(a)(6)(C)(i) of the Immigration and Nationality Act.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from violation of section 212(a)(9)(B) of the Act and a 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act are dependent first upon a showing that inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant herself would experience upon removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's naturalized U.S. citizen spouse if the applicant is removed. If extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's qualifying relative must be established in the event that he resides in Israel or in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Israel, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant's spouse was born in Morocco, his father is deceased, and his mother lives in Israel. *Form G-325A for the applicant's spouse.* The applicant's spouse grew up in Israel, having immigrated there as a toddler with his parents. *Psychological evaluation from [REDACTED] Ph.D.*, dated July 30, 2003. The applicant's spouse has three adult children from a previous marriage who live in New York. *Id.* The applicant's spouse is very close to his children in the United States, and he could not conceive of leaving them and going to another country. *Id.* His children need him to support them, emotionally and financially. *Id.* The AAO notes that the children of the applicant's spouse are not qualifying relatives in this case. Furthermore, his children in the United States are all adults and while the record shows that the applicant's spouse pays the university and law school tuition for two of his children (*See tuition receipts*), the record fails to demonstrate that he would be unable to continue to support them financially from Israel. According to a psychological evaluation, much of the identity of the applicant's spouse is tied in with his life's work, his business. *Psychological evaluation from [REDACTED] Ph.D.*, dated July 30, 2003. Working in his business demands his presence. *Id.* It is unlikely that the applicant's spouse can continue to

hold onto his vibrant and demanding business if he were to continue to travel back and forth to Israel. *Id.* The loss of his business would further erode the identity of the applicant's spouse, increasing the chances of suicidality or psychotic breaks, related to a disturbed sense of identity. *Id.* While the AAO acknowledges the findings of the psychologist, it notes that his conclusions regarding the effect of the applicant's spouse's travel on his business are not supported by the record. There is no description in the record as to how the applicant's spouse's real estate business works or whether it requires his presence on a full-time basis. The record also fails to include information regarding the applicant's spouse's income and how much the applicant's inadmissibility would financially affect him. The AAO does not find that the record demonstrates that the applicant or his spouse would be unable to sustain themselves and contribute to their family's financial well-being from a location outside of the United States. The applicant's spouse stated that his health has been affected due to his frequent flying and that as a result, he has suffered numbness in his fingers and toes, nose bleeds, and panic attacks. *Statement from the applicant's spouse*, dated December 12, 2002. He also stated that his doctor advised him that he could develop a fatal blood clot from frequently flying. *Id.* While the AAO acknowledges the claims of the applicant's spouse, it notes that there is nothing in the record to support such statements. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in Israel.

If the applicant's spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the three adult children of the applicant's spouse live in the United States. *Psychological report from [REDACTED] Ph.D.*, dated July 30, 2003. The present disappointment of being unable to see the applicant is likely to drive the applicant's spouse to self-destruction. *Id.* He is already developing difficulties sleeping and eating and he experiences somatic pains in his chest and back. *Id.* He feels confused and indecisive and suffers from nightmares. *Id.*; *See Also statement from the applicant's spouse*, dated December 12, 2002. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted letter is based on a single interview between the applicant's spouse and the psychologist. The record fails to reflect an ongoing relationship between a mental health professional and the applicant's spouse or any history of treatment for the applicant's spouse. Moreover, the conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and detailed analysis commensurate with an established relationship with a psychologist, thereby rendering the psychologist's findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Although the psychologist suggests that the applicant's spouse may need to be under psychiatric care and receive ongoing psychotherapy, the record fails to demonstrate that the applicant's spouse has followed-up with any sort of treatment.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th 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 (9th 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. *Hassan 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, his situation, if

he 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. When looking at the aforementioned factors, the AAO does not find that the applicant demonstrated extreme hardship to her spouse if he were to reside in the United States.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) and 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.