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U.S. Citizenship  
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[REDACTED]

FILE:

Office: ATHENS, GREECE

Date:

APR 24 2008

IN RE:

[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).

ON BEHALF OF APPLICANT:

[REDACTED]

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 (OIC), Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native of Lithuania and citizen of Israel who was found to be inadmissible to the United States pursuant to 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 committed a crime involving moral turpitude. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by [REDACTED], a naturalized U.S. citizen also born in Lithuania. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her spouse.

The applicant and her spouse were married on September 11, 2003 in Israel. The applicant's spouse filed the Form I-130 petition on October 2, 2003, and it was approved on August 9, 2004. The applicant filed an Application for Immigration Visa (DS-230) on March 3, 2005. The applicant also filed an Application for Waiver of Grounds of Excludability (Form I-601).

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of OIC*, dated December 7, 2005.

On appeal, counsel asserts that the OIC abused her discretion by not considering the evidence of hardship in the aggregate and by misapplying relevant law. *Brief in Support of Appeal*, dated January 27, 2006, at 1. Counsel states that though the applicant's crime is a crime involving moral turpitude, it is a minor crime outweighed by the positive factors in the case. *Id.* at 5-6. Counsel indicates that if the waiver is not granted, the applicant's spouse will be compelled to relocate to Israel. *Id.* at 7. Counsel contends that this will result in extreme hardship to the applicant's spouse, as he does not speak Hebrew and will be forced to abandon his successful real estate business and the social connections he has made in the United States. *Id.* at 8-10. Counsel asserts that the applicant's spouse will be separated from his son, with whom he has regular visits pursuant to a custody agreement with his ex-wife, and be unable to make his child support payments. *Id.* at 9. Counsel states that the applicant will also suffer hardship in being separated from his elderly mother, who depends on his assistance. *Id.* at 10. Counsel asserts that the applicant's life as a U.S. citizen in Israel "would be in constant jeopardy because of the socio-political tension that exists in Israel." *Id.* at 7-8.

In support of the waiver application, the applicant has submitted, among other documents, a statement, a statement from her spouse, a consular information sheet for Israel, receipts for payment of taxes by the applicant's spouse's company, family photographs, notices of payment of child support by the applicant's spouse, college fund statements for the applicant's spouse's son, medical and financial records for the applicant's spouse's parents, letters from friends, and a letter from the applicant's spouse's Rabbi. The record also contains tax records for the applicant's spouse and his business and divorce papers from the applicant's spouse's previous marriage. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (i) In general.— . . . [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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Court documents in the record reflect that the applicant was convicted on July 9, 2001 by the County Court of Tel-Aviv-Jaffa, Israel, of stealing the equivalent of \$400 from her employer. The applicant was sentenced to five months imprisonment of a maximum possible sentence of three years, but the sentence was suspended. Theft offenses are generally considered crimes involving moral turpitude. *Matter of Garcia*, 11 I&N Dec. 521 (BIA 1966). See also *Matter of V-*, 2 I&N Dec. 340 (BIA 1940), *Matter of V- I-*, 3 I&N Dec. 571 (BIA 1949), *Wilson v. Carr*, 41 F.2d 704 (9th Cir. 1930), and *Matter of Esfandiary*, 16 I&N Dec. 659 (BIA 1979). Counsel has not disputed that the applicant's crime is a crime involving moral turpitude or that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(h) of the Act provides, in pertinent part:

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –

....

(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 [Secretary] 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 AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the only relative that qualifies is the applicant's spouse. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), the Ninth Circuit Court of Appeals held that, “the most important single hardship factor may be the separation of the alien from family living in the United States”, and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted.) Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes further, however, that 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 (9<sup>th</sup> Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), the Ninth Circuit Court of Appeals defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request. However, in this case, the applicant’s spouse has indicated that he will relocate to Israel if the waiver application is denied.

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 spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant’s spouse would continue to experience some emotional hardship if he remains separated from the applicant, but also notes that they have been separated for most of their marriage. Notwithstanding the weight given to separation as a hardship factor, the evidence submitted by the applicant does not show that the hardship of separation in this case is atypical of individuals separated as a result of removal or inadmissibility and it does not rise to the level of extreme hardship based on the record. As stated above, U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991).

The applicant has also not demonstrated that her spouse will suffer extreme hardship if he relocates to Israel. The AAO acknowledges that the applicant owns a real estate company and will experience some financial hardship should he choose to move to Israel. However, the economic impact of relocation to Israel cannot be ascertained from the evidence in the record. The applicant’s spouse has not submitted any recent

documentation showing his earnings. He has asserted that his company generates gross commission income in the amount of approximately \$600,000 per year, but he has not submitted documentation showing his earnings since 2002, a year in which he reported earnings of less than \$70,000. More importantly, the applicant has not submitted evidence beyond the assertions of counsel and her spouse demonstrating that he will be unable to obtain employment in Israel. The applicant's spouse has asserted that he will be unable to make his child support payments and render financial assistance to his mother if he relocates to Israel, but there is insufficient evidence showing that this is the case. Although the statements by the applicant's spouse are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). 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)). Likewise, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO also acknowledges that relocation to Israel may interfere with the applicant's spouse's limited visits with his son and will separate him from his mother, but determines that these hardships are typical of individuals separated as a result of removal or inadmissibility and, even when viewed in combination with possible economic hardship, do not rise to the level of extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen as required under section 212(h) of the Act. 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(h), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. *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.