

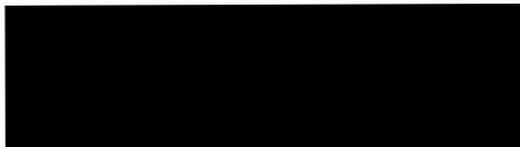
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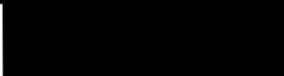


U.S. Citizenship
and Immigration
Services

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FILE:



Office: JACKSONVILLE, FLORIDA

Date:

H3
MAR 27 2006

IN RE:



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:



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 that reads "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami. 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 Israel 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 seeking readmission within 10 years of his last departure from the United States. The applicant seeks a waiver of inadmissibility in order to adjust his status to permanent resident and remain in the United States with his U.S. citizen wife.

The applicant filed a Form I-601, Application for Waiver of Ground of Excludability on May 7, 2002. On April 21, 2004, the district director issued a Notice of Intent to Deny the application, affording the applicant 30 days in which to provide additional evidence. The applicant submitted a response, yet 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 wife. The application was denied accordingly. *Decision of the District Director*, dated August 18, 2004.

On appeal, counsel asserts that the applicant's wife will suffer extreme hardship if the applicant is prohibited from remaining in the United States. *Brief in Support of Appeal*, dated September 21, 2004. Counsel further contends that the district director failed to adequately consider the evidence of record or articulate reasons for the denial, and thus the decision was an abuse of discretion. *Id.*

The record contains briefs from counsel in support of the appeal, in response to the district director's notice of intent to deny, and in support of the initial Form I-601 application; reports on conditions in Israel; a psychological evaluation of the applicant and his wife from [REDACTED] and; letters from the applicant's friends and family members. 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.

(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.

In the present application, the record indicates that the applicant entered the United States on April 11, 1983 as a B-2 visitor for pleasure. The applicant was approved for an extension of his B-2 status, valid until March 10, 1984. On August 22, 2000, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status. Subsequently, the applicant was approved for advance parole, valid from September 7, 2000 until September 5, 2001. The applicant departed the United States and was readmitted pursuant to the parole document. Based on the foregoing, the applicant was present in the United States without a legal status for approximately 16 years, from March 11, 1984 to August 22, 2000. The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until August 22, 2000, the date that he filed his Form I-485 application.¹ Thus, the applicant accrued over three years of unlawful presence. Accordingly, the applicant was found inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of his last departure from the United States. The applicant does not contest his inadmissibility on appeal.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon being found inadmissible is irrelevant to section 212(a)(9)(B)(v) waiver proceedings. Once 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 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These 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.

Relevant factors, though not extreme in themselves, must be considered in aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning

¹ The district director noted that the applicant was unlawfully present in the United States commencing on March 11, 1984. However, as the unlawful presence provisions under the Act were not enacted until April 1, 1997, the applicant did not begin to accrue unlawful presence until that date.

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).

In support of the Form I-601 application, counsel explained that the applicant's wife is dependent on him for financial and emotional support. *Counsel's Statement in Support of Form I-601 Application* at 2-4, dated April 11, 2002. Counsel stated that the applicant provides 75% of the income for himself and his wife, and the applicant's wife would be unable to support herself without the applicant's assistance. *Id.* at 3-4. Counsel contended that the applicant's wife is unable to care for the applicant's businesses in the United States if the applicant departs. *Id.* at 3. The applicant submitted documentation that he and his wife purchased a home together.

Counsel noted that the applicant's wife has resided in Panama City, Florida for her entire life, and that she has extensive family and community ties there. *Id.* at 3-4.

Counsel asserted that the applicant's wife's previous history of a suicide attempt and substance abuse renders the affects of separation from the applicant or relocation to Israel more severe. *Id.* at 3. The applicant provided a psychological evaluation of the applicant and his wife from [REDACTED] explained that he evaluated the applicant and his wife in the course of single interview. *Report of [REDACTED]* at 2, dated April 10, 2002. [REDACTED] expressed his opinion that the applicant's deportation poses a risk for the applicant's spouse to develop clinically significant depression and/or anxiety, and for the applicant's marriage to terminate. *Id.* at 6-7. [REDACTED] referenced the prior alcohol abuse of the applicant's spouse, yet he does not include in his conclusion that the applicant's deportation would result in a relapse of such substance abuse. [REDACTED] further concluded that "both [the applicant and the applicant's wife] are generally asymptomatic on psychological distress and do not have any clinically significant elevations on any of the scales to indicate psychological problems or psychopathology." *Report of [REDACTED]* at 4.

Counsel contends that relocation to Israel would present unusual hardship for the applicant's wife, as she is not Jewish, she does not speak Hebrew, and she would not be accepted into Israeli society. *Counsel's Statement in Support of Form I-601 Application* at 3. Counsel further highlighted that recent conflict in Israel presents risk for the applicant's spouse. *Id.* at 3. Counsel indicated that the applicant's wife would have difficulty securing employment in Israel, as the tourism, hotel, and restaurant industry in which she works is not thriving under current conditions. *Id.* at 3.

The record contains statements from friends and family members of the applicant and his wife, in which the authors attest to the applicant's good character and stable marriage. *Statements from Applicant's Friends and Family*.

Counsel further noted that Citizenship and Immigration Services (CIS) granted the applicant permission to depart the United States and return, pursuant to his approved advance parole document issued on September 7, 2000. *Counsel's Statement in Support of Form I-601 Application* at 3. Counsel stated that the applicant and his wife were unaware that the applicant's departure would trigger his inadmissibility under Section 212(a)(9)(B)(i)(II) of the Act. Counsel stated that "[the applicant's] readmission to the United States can be

reasonably construed as a waiver and a cure of any previous unlawful presence.” *Counsel’s Statement in Support of Form I-601 Application* at 3.

On appeal, counsel contends that the district director failed to adequately consider the evidence of record or articulate reasons for the denial, and thus the decision was an abuse of discretion. *Brief in Support of Appeal*, dated September 21, 2004. Counsel highlights that the director failed to note that the applicant has no criminal history. *Id.* at 2.

Upon review, the applicant has not established that his wife would suffer extreme hardship should he be prohibited from remaining in the United States. Counsel explains that the applicant’s wife will suffer economic hardship if the applicant departs the United States, as she depends on the applicant to provide substantial economic assistance. However, the applicant has not shown that his wife will be unable to meet her financial needs in his absence. The applicant has not submitted any documentation to show his wife’s current financial status, such as her pay stubs or other evidence of her salary, tax records, or documentation of her monthly expenses. While counsel claims that the applicant’s income accounts for 75 percent of the household’s resources, the applicant has not provided any evidence to support this assertion. Counsel claims that the applicant’s wife is unable to maintain the applicant’s business interests alone. However, the applicant has failed to sufficiently describe his business activity or to submit documentation to support that he in fact operates a business. 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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner’s burden of proof. The 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). As the record shows that the applicant’s wife works and earns income, it is evident that she will not be without financial support in the applicant’s absence. The applicant has not established that she would be unable to meet her needs alone, or that she would suffer significant hardship without his financial assistance.

Counsel contends that the applicant’s wife will suffer emotional hardship if she is separated from the applicant. However, it is noted that the applicant and his spouse have failed to provide their own statements regarding the possible emotional consequences of separation. Thus, the AAO is limited to a review of the opinions of counsel, brief statements from the applicant’s family and friends, and a psychological evaluation based on a single interview. The psychological evaluation is of limited use, as it was conducted for the purpose of these proceedings, and does not represent treatment for a mental health disorder. As noted above, [REDACTED] concluded that “both [the applicant and the applicant’s wife] are generally asymptomatic on psychological distress and do not have any clinically significant elevations on any of the scales to indicate psychological problems or psychopathology.” *Report of [REDACTED]* at 4. Thus, the report indicates that the applicant and his wife did not exhibit significant signs of psychological distress at the time of the evaluation. [REDACTED] opinion that the applicant’s departure would cause substantial emotional and physical health effects for the applicant’s wife is given due consideration. Yet, the applicant has provided no evidence that his wife received or required follow-up evaluation from a mental health professional. While the evaluation is helpful in providing an understanding of the background and challenges of the applicant’s wife,

it does not show that, should the applicant depart the United States, his wife will suffer emotional consequences beyond those ordinarily experienced by families of those who are deported.

The record suggests that the applicant's wife has ties to her family in the United States, and that separation from them would be difficult. Counsel and [REDACTED] further contend that the applicant and his wife will suffer hardship if separated, possibly resulting in divorce. However, 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 situation of the applicant's wife, if she remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

The counsel references the applicant's wife's history of alcohol abuse, and suggests that separation from the applicant could exacerbate her condition leading to further substance abuse. However, [REDACTED] noted that the applicant's wife's alcoholism began before she met the applicant. As her condition was preexisting before the possibility of deportation of her spouse arose, it is not deemed a consequence of separation. Further, the applicant has submitted no documentation from medical professionals attesting to his wife's current health status, history of substance abuse, or prior suicide attempt. While [REDACTED] makes reference to these conditions, as noted above his findings are the result of a single meeting that was focused on the applicant's and his wife's psychological health. [REDACTED] report is not sufficient evidence of the applicant's wife's physical health or history of alcohol abuse. Further, the applicant has provided no documentation or assertions to show that his wife would be unable to obtain sufficient physical or mental healthcare in Israel should she chose to relocate there with the applicant. Again, 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. at 165.

Counsel asserts that the applicant's wife would suffer serious hardship if she relocates to Israel, including difficulty securing employment and assimilating into Israeli society. Counsel further highlights recent internal conflict in Israel as a possible risk for the applicant's wife. However, while the AAO acknowledges that adapting to an unfamiliar culture poses a significant challenge, the applicant has not provided sufficient explanation and documentation to show that his wife would suffer consequences in Israel that rise to the level of extreme hardship. The AAO notes that, as a U.S. citizen, the applicant's wife is not required to reside outside of the United States as a result of denial of the applicant's waiver request. She may remain in the United States if she chooses. Such choice would result in a difficult separation. However, as discussed above, the applicant has not established that such separation goes beyond those consequences ordinarily experienced by the families of those deemed inadmissible.

Counsel asserts that the applicant and his wife were unaware that the applicant's departure pursuant to his advance parole document would trigger his inadmissibility under Section 212(a)(9)(B)(i)(II) of the Act. However, on the face of the applicant's advance parole document, it clearly and prominently states:

NOTICE TO APPLICANT: . . . If, after April 1, 1997, you were unlawfully present in the United States for more than 180 days before applying for adjustment of status, you may be found inadmissible under section 212(a)(9)(B)(i) of the Act when you return to the United States to resume the processing of your application. If you are found inadmissible, you will need to qualify for a waiver of inadmissibility in order for your adjustment of status application to be approved.

Thus, the applicant had notice of the risk of departure from the United States using his advance parole document. He was found inadmissible for the reason presented in the warning on the document.

Counsel stated that "[the applicant's] readmission to the United States [pursuant to the advance parole document] can be reasonably construed as a waiver and a cure of any previous unlawful presence." *Counsel's Statement in Support of Form I-601 Application* at 3. The adjudication of a Form I-131, Application for Travel Document, is separate from the adjudication of a Form I-601 application for a waiver. The record does not reflect whether CIS, when adjudicating the applicant's Forms I-131, considered the likelihood of the applicant receiving a waiver. However, the issuance of a Form I-512, Authorization for Parole of an Alien into the United States, does not serve as prima facie evidence that an applicant is eligible for a waiver, and it does not reflect that an applicant's eligibility for a waiver has been previously fully considered and approved. The applicant must submit sufficient documentation with his Form I-601 application to establish eligibility for a waiver. As discussed above, in the present matter the applicant has failed to show eligibility.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's wife should the applicant be prohibited from remaining in the United States, considered in aggregate, do not rise to the level of extreme hardship. Thus, the applicant has not shown that his departure would result in extreme hardship to a qualifying relative, and he is statutorily ineligible for relief. *See* section 212(a)(9)(B)(v) of the Act.

Counsel points out that the director failed to note that the applicant has no criminal history. *Counsel's Statement in Support of Form I-601 Application* at 2. However, positive and negative factors of the applicant's presence in the United States are only considered in the course of exercising discretion. In the present matter, CIS lacks the discretion to approve the application for a waiver, and no purpose would be served in discussing the balance of positive and negative factors that would determine whether he merits a waiver as a matter of discretion. *See* section 212(a)(9)(B)(v) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under section 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.