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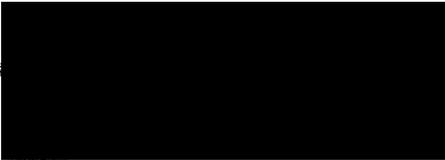
Office: ATHENS, GREECE

Date: FEB 24 2005

IN RE: LEONID SOSIS

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:



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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Uzbekistan who was found by a consular officer 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 is the spouse of a naturalized citizen of the United States and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse and child.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Officer in Charge*, dated December 10, 2003.

On appeal, counsel contends that the submitted documentation demonstrates that extreme hardship is imposed on a United States citizen by the applicant's inadmissibility to the United States; the crime the applicant was convicted of was a minor offense that does not warrant a denial of permanent residency and the applicant is rehabilitated. *Form I-290B*, dated January 8, 2004.

In support of these assertions, counsel submits a brief; a declaration of the applicant; a declaration of the applicant's spouse; a declaration of the applicant's daughter; letters of support; copies of phone records; copies of money wire transfer receipts and copies of four photographs of the applicant and his family. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on June 18, 2000, the applicant was convicted in the Magistrate's Court of Tel-Aviv, Israel, of credit card theft; forgery with the intention of obtaining something; use of a forged document; trying to fraudulently obtain something and credit card deceit. He was sentenced to six months in prison, suspended in exchange for a fine or an abbreviated prison sentence, alternatively on the condition that the applicant not commit a crime within three years from the date of the offenses.

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

- (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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

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

- (1)(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 . . .

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. 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).

The AAO notes that the decision of the officer in charge incorrectly cites sections 212(a)(9)(B)(v) and 212(i) as the waiver provisions under which the applicant is eligible for a waiver of his inadmissibility grounds. The AAO notes that section 212(a)(9)(B)(v) is a waiver provision applying to aliens who have accumulated unlawful presence and, as a result, are inadmissible to the United States pursuant to section 212(a)(9)(B)(i) or section 212(a)(9)(B)(ii) of the Act. The record fails to establish that the applicant has accumulated unlawful presence in the United States and therefore section 212(a)(9)(B)(v) of the Act is inapplicable. Likewise section 212(i) of the Act provides a waiver provision for aliens who are inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. An alien is inadmissible under section 212(a)(6)(C)(i) of the Act if such alien "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." The record fails to establish that the applicant is inadmissible under this section of the Act and therefore section 212(i) is inapplicable.

The decision of the officer in charge further errs in finding that hardship suffered by the applicant's child is not a consideration in the instant application. The AAO finds that the applicant is eligible for consideration of a waiver pursuant to section 212(h)(1)(B) of the Act, quoted *supra*, a provision that clearly allows for consideration of hardship suffered by the applicant's son or daughter as a result of the applicant's inadmissibility to the United States.

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 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.

Counsel contends that the applicant's spouse and child would suffer extreme hardship as a result of relocating to Israel in order to reside with the applicant. Counsel submits a declaration from the applicant's spouse stating that she is unable to reside in Israel because she fears for her daughter's safety. She indicates that Palestinians target teenagers and she does not want her daughter to fall victim to a suicide bomber. *Declaration of Sofia Gurevich*, dated February 1, 2004. The applicant's daughter states that her mother left Uzbekistan to create a better life and that she cannot relocate to a place where her opportunities will be

diminished. *Declaration of Ellina Gurevich*, dated February 1, 2004. Counsel further contends that the applicant's spouse provides care to her mother who suffers from advanced congestive heart failure, diabetes, hypertension, atrial fibrillation and coronary artery disease, among other ailments. *Letter from Daniel Cremin, MD*, dated February 4, 2004. *See also Letter from Purita Z. Villanueva, MD, MPH*, dated January 17, 2004.

Counsel fails to establish that the applicant's spouse and child will suffer extreme hardship if they remain in the United States maintaining residence in a stable country, access to opportunity and proximity to the mother of the applicant's spouse. Counsel contends that the applicant's spouse suffers financial hardship as a result of separation from the applicant. *Brief in Support of Appeal*, dated February 4, 2004. Counsel states that the responsibilities of supporting the applicant, the couple's daughter and her mother as well as herself constitute a hardship to the applicant's spouse. *Id.* at 3. The record reflects that the applicant was unemployed for a period of approximately five months, but has resumed working. *Id.* Although counsel asserts that the applicant is unable to support himself with his earnings, the record fails to contain documentary evidence supporting this assertion. The AAO notes that the applicant and his spouse have never resided together as a married couple rendering the assertion that separation imposes financial hardship on the applicant's spouse unpersuasive.

Counsel contends that the applicant's daughter suffers from psoriasis and oppositional behavior as a result of the applicant's inadmissibility. *Id.* Counsel submits a letter from a physician treating the applicant's daughter that attests to the fact that she "has intermittent bouts of psoriasis and oppositional behaviors. She is doing good in school at this time." *Letter from Purita Z. Villanueva*. The record fails to provide further explanation of the medical and psychological condition of the applicant's daughter. In the absence of additional information, the AAO is unable to make a determination that the condition of the applicant's daughter amounts to extreme hardship.

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. 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. The AAO recognizes that the applicant's spouse and child likely endure hardship as a result of separation from the applicant. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and child caused by the applicant's inadmissibility to the United States. Having found the

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

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. *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.