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U.S. Department of Homeland Security  
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U.S. Citizenship  
and Immigration  
Services

H2



FILE: [REDACTED] Office: ATHENS, GREECE Date: SEP 19 2008

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) and 1182(a)(9)(B)(v) respectively, and Application for Permission to Reapply for Admission under section 212(a)(9)(A)(iii) of the Act.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 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, section 212(a)(9)(B)(i)(II), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more after April 1, 1997, and section 212(a)(9)(A)(ii), 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien seeking admission to the United States within 10 years of removal. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse, [REDACTED]. 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 his U.S. citizen spouse and children. The applicant also seeks permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act.

The record reflects that the applicant sought admission to the United States in April 1996 as a nonimmigrant. The applicant was paroled into the United States for exclusion proceedings to determine if he was an intending immigrant without a valid unexpired immigrant visa excludable under section 212(a)(7)(A)(I) of the Act. On August 15, 1997, the applicant was ordered excluded from the United States. The applicant's subsequent appeal to the Board of Immigration Appeals (BIA) was rejected as untimely. On July 31, 2000, the applicant was apprehended by the U.S. Border Patrol in West Palm Beach, Florida after being questioned by Palm Beach County Sheriff's Department in connection with a "moving company scam." The applicant claimed that he had entered the United States without inspection on or about February 1, 1995 and requested voluntary departure to Israel. The applicant was permitted to depart voluntarily by August 30, 2000.

The applicant and his spouse were married on December 29, 2002 in the United States. The applicant's spouse filed a Form I-130 petition and the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on January 29, 2003.

On July 30, 2003, the applicant entered into a plea agreement with the United States Attorney for the Southern District of Florida in which he agreed to plea guilty to conspiracy to commit wire fraud in violation of 18 U.S.C. § 1343, conspiracy to commit extortion in violation of 18 U.S.C. § 1951, and conspiracy to make a false bill of lading, in violation of 49 U.S.C. § 80116, all in violation of 19 U.S.C. § 371, with a maximum possible sentence of five years imprisonment. On October 14, 2003, the applicant was sentenced to six months imprisonment and two years of supervised release. The applicant was removed from the United States to Israel on November 18, 2003.

On August 2, 2004, the applicant's spouse filed another Form I-130 petition naming the applicant as beneficiary with the U.S. Consulate in Tel Aviv, Israel. The applicant subsequently filed an Application for Waiver of Grounds of Excludability (Form I-601) and an Application for Permission to Reapply for Admission to the United States after Deportation or Removal (Form I-212).

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 May 10, 2006.

The OIC also determined that the adverse factors present in the case outweigh the positive factors and denied the Form I-212 application accordingly. *Id.*

On appeal, the applicant's spouse states that she fears for her life and the life of her children in Israel because of terrorist attacks there. She states that she is suffering from psychological problems and has no desire to continue living.

In support of the waiver application, the applicant has submitted, among other documents, an undated affidavit and a letter dated September 6, 2007 from the applicant's spouse, a "diagnosis summary" dated June 1, 2006 and a letter dated June 6, 2006 from [REDACTED] a clinical social worker in Israel; an undated psychological evaluation from Adam Feder, a licensed clinical psychologist; a letter dated May 3, 2005 from [REDACTED] a psychotherapist; an undated letter from the applicant's brother; a travel warning from the U.S. State Department for Israel; and an employment offer for the applicant from U.S. Grounds, Inc. The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO first reviews the decision to deny the applicant's Form I-601 waiver application. Section 212(a)(9)(B) of the Act provides, in pertinent part, that:

(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 Secretary, 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 ordered removed on August 7, 1997, but remained in the United States until filing a Form I-485 application on January 29, 2003. The applicant was removed from the United States on November 18, 2003. Therefore, the applicant was unlawfully present in the United States from August 7, 1997 until January 29, 2003, a period in excess of one year, and is now seeking admission to the United States. The applicant has not disputed that he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

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.

As stated above, on July 30, 2003, the applicant entered into a plea agreement with the United States Attorney for the Southern District of Florida in which he agreed to plead guilty to conspiracy to commit wire fraud in violation of 18 U.S.C. § 1343, conspiracy to commit extortion in violation of 18 U.S.C. § 1951, and conspiracy to make a false bill of lading, in violation of 49 U.S.C. § 80116, all in violation of 19 U.S.C. § 371, with a maximum possible sentence of five years imprisonment, followed by three years of supervised release. On October 14, 2003, the applicant was sentenced to six months imprisonment and two years of supervised release.

Conspiracy has been found to be a crime involving moral turpitude where the objective of the conspiracy is a crime of moral turpitude. *See Jordan v. De George*, 341 U.S. 223 (1951); *see also Omagah v. Ashcroft*, 288 F.3d 254 (5<sup>th</sup> Cir. 2002), *Matter of Short*, Interim Decision 3125 (BIA 1989). Crimes of fraud and extortion are considered crimes involving moral turpitude. *See Burr v. INS*, 350 F.2d 87, 91 (9<sup>th</sup> Cir. 1965); *Matter of F-*, 3 I. & N. Dec. 361 (BIA 1949) (extortion). The applicant has not disputed that his conviction constitutes a crime involving moral turpitude rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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), (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 sections 212(a)(9)(B)(v) and 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 under both provisions 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. *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.

In her affidavit, the applicant's spouse indicates that she is native of the United States and that all her family resides in the United States. She also states that she has a Master's Degree in social work and has but to complete a few requirements to be licensed in Florida as a clinical social worker. She states that she had to abandon her family and promising career to travel with the applicant to Israel, which has contributed to the deterioration of her emotional and mental health. She asserts that neither she nor the applicant has been able to find employment in Israel and that she lives in fear of terrorist attacks, fear that prevents her from sleeping. She contends that the applicant would be able to contribute to her financial support if he were in the United States, as he has been offered a job by the applicant's brother, the owner of two corporations. She indicates that she and her children will suffer extreme emotional hardship if they return to the United States alone.

She asserts that she will be unable to earn enough to support herself and her children if she returns to the United States without the applicant.

In his evaluation, [REDACTED] diagnoses the applicant's spouse with Post Traumatic Stress Disorder, Recurrent Major Depression and Recurrent Dysthymic Disorder. He states that if the waiver application is not approved, the "likely consequences will be devastating and will no doubt [cause] long term damage to the family structure and the self-efficacy of their two developing children..." [REDACTED] does not indicate the date or dates on which he evaluated the applicant or indicate where the interview or interviews occurred. In his diagnostic summary dated June 1, 2006, [REDACTED] states that due to the dramatic change of the applicant leaving behind her family, friends and career to reside with the applicant in Israel, the applicant's spouse "is in a deep depression and cannot see herself living in Israel any longer."

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 and children would experience emotional hardship if she returns to the United States and is separated from the applicant, but the applicant has not demonstrated that this hardship, when combined with other hardship factors, rises to the level of extreme hardship. Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted evaluation from [REDACTED] appears to be based on single interview between the applicant's spouse and the psychologist. The evaluation is undated and [REDACTED] does not indicate the date or location of his interview with the applicant's spouse. The record fails to reflect an ongoing relationship between [REDACTED] and the applicant's spouse or any history of treatment he has provided her. The conclusions reached by [REDACTED] in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration commensurate with an established relationship with a psychologist, thereby rendering [REDACTED] findings speculative and diminishing the evaluation's value to a determination of extreme hardship. Nevertheless, taken together, the evaluations of [REDACTED] and [REDACTED] are evidence that the applicant's spouse is suffering from depression in Israel mainly as a result of separation from her family and friends in the United States, abandonment of her profession and loss of independence, fear of terrorism, and her inability to find a solution to the applicant's immigration situation so that they and their children can live together in the United States.

There is no evidence demonstrating that the applicant has a past history of depression or suffered from depression or other mental health condition before she moved to Israel, and the evaluations submitted do not reflect that the applicant would continue to suffer depression in the form she does now if she returned to the United States. The record shows that the applicant's spouse, a native of the United States, enjoys the support of a network of family and friends in the United States. She has a master's degree in social work and has been employed in that field in the United States; the evidence does not show that the applicant's spouse will suffer financial hardship if the waiver application is denied and she returns to the United States. 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 (9th Cir. 1991). It is also noted that the applicant had already been ordered removed at the time he and his spouse were married, a relevant factor in finding that the applicant's spouse will not experience extreme hardship in his absence. *See Cervantes-Gonzalez*, 22 I. & N. Dec. at 566-67 ("the respondent's wife knew that the respondent was in deportation proceedings at the time they were married . . . [which] goes to the respondent's wife's expectations at the time they were wed . . . [and] undermine[s] the respondent's argument that his wife will suffer extreme hardship if he is deported.").

The AAO acknowledges the evidence that the applicant's spouse is suffering extreme hardship in Israel. The applicant is a native of the United States, has no family in Israel and had to abandon her career (and any financial independence) as a clinical social worker when she moved to Israel. The evidence shows that the applicant suffers from depression as a result of these circumstances and her fear of terrorist attacks in Israel. However, as stated above, the applicant has not demonstrated that his spouse will suffer extreme hardship if she returns and resides in the United States.

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 his U.S. citizen spouse as required under sections 212(h) and 212(a)(9)(B)(v) of the Act. 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 or should be granted permission to reapply for admission as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) and 212(a)(9)(B)(v), 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.