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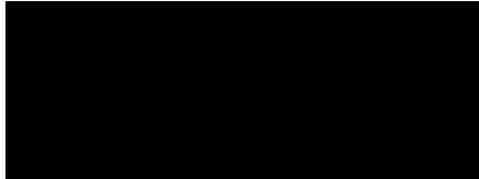
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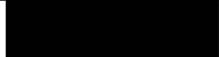
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
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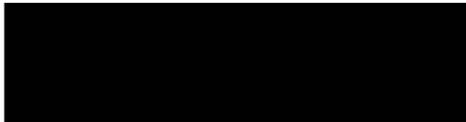
AUG 11 2009

IN RE:



PETITION: 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 PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

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

The applicant has been 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 seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen spouse.

The Field Office Director 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 the Field Office Director*, dated April 9, 2008.

On appeal, counsel contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant failed to establish extreme hardship to his qualifying relative, as necessary for a waiver under section 212(h) of the Act. *Form I-290B*.

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, statements from the applicant's spouse; medical bills and records for the applicant's spouse; telephone bills; and a statement from the applicant. The entire record was considered in rendering a decision on the appeal.

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) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -
 - (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
 - (ii) the admission to the United States of such alien would not be contrary to the

national welfare, safety, or security of
the United States, and
(iii) the alien has been rehabilitated; or

(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 . . .

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. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

Prior to determining whether the applicant qualifies for a waiver, the AAO finds it necessary to address the issue of inadmissibility. The record shows that the applicant admitted to being convicted in Israel of stealing a car, damaging a car, endangering the public in a police chase, evading arrest, and driving a vehicle without the proper license and insurance. *Consular Memorandum, American Consulate General, Jerusalem, Israel*, dated July 20, 2007. Although the record does not specify the amount of time to which the applicant was sentenced, the applicant stated that he spent seven months and six days in jail. *Id.* The AAO notes that the record does not include reference to the specific Israeli statutes under which the applicant was convicted, nor does the record include copies of those statutes with accompanying certified translations. The record also fails to include criminal court records regarding the applicant's convictions. It is the applicant's burden to show that he is admissible to the United States. As the applicant has failed to submit the foreign criminal court records and documentation necessary to determine whether he has committed a crime

involving moral turpitude, the AAO finds him to be inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (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 whether she resides in Beit Anaan or the United States, as she is not required to reside outside 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 joins the applicant, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States and her parents were born in Jordan. *G-325A, Biographic Information sheets, for the applicant's spouse*. Counsel asserts that it is too dangerous for the applicant's spouse, an American citizen of Palestinian lineage, to live in a zone of danger where she would be pressured by the occupying Israelis or the Muslim activists. *Attorney's brief*. The applicant notes that the climate is still violent and his spouse fears living in a place where Israelis and Palestinians are constantly fighting. *Statement from the applicant*, dated November 16, 2007. The AAO acknowledges these statements and notes that, on January 15, 2009, the U.S. Department of State issued a travel warning that remains in effect for Israel, the West Bank, and Gaza urging U.S. citizens to refrain from all travel to the Gaza Strip and defer travel to the West Bank. *Travel Warning, Israel, the West Bank, and Gaza, U.S. Department of State*, dated January 15, 2009. The warning notes that Israeli authorities remain concerned about the threat of terrorist attacks. *Id.* As such, the AAO finds that the applicant has demonstrated extreme hardship to his spouse if she were to relocate to Beit Anaan.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in the United States. *G-325A, Biographic Information sheets, for the applicant's spouse*. Although her parents were born in Jordan, they currently reside in the United States. *Id.* Counsel asserts that it would be financially impossible for the applicant's spouse to find employment in the United States that would allow her to periodically travel to visit the applicant. *Attorney's brief*. While the AAO acknowledges counsel's assertion, it notes that the applicant's spouse has worked in the United States in the industry of sales and as an educator. *G-325A, Biographic Information sheets, for the applicant's spouse*. There is nothing in the record to support counsel's assertion that she would be unable to find a job that would allow her to periodically visit the applicant. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these

proceedings. 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). The applicant's spouse has been treated for a medical condition on her right toe. *Neurological Consultation Report*, [REDACTED] *Professional Neurological Services, Ltd.*, dated June 18, 2007. Medical tests suggest that the applicant's spouse may also have tarsal tunnel syndrome and beginning sensory peripheral neuropathy. *Id.* The applicant's spouse states that she has a herniated disc in her spinal column, along with pinched nerves. *Statement from the applicant's spouse*, dated March 17, 2008. She also contends that there are days when it is difficult for her to get around and that she needs the applicant to help her move around the house, bathe and prepare meals. *Id.* The applicant notes that his spouse needs an epidural every eight to nine months and undergoes physical therapy twice a week. *Statement from the applicant*, dated November 16, 2007; *See also prescription for epidural*, dated July 3, 2007. He notes that his spouse needs his help and support. *Id.* He also notes that the entire immediate family of the applicant's spouse, which includes her three siblings, newborn niece, and her parents, live in the United States. *Id.* While the AAO acknowledges the documented health condition regarding the applicant's spouse and her need for at least one epidural, it notes the medical documentation in the record does not address the herniated disc or pinched nerves in her spinal column. Neither does this documentation indicate how the applicant's spouse's medical condition would affect her ability to function or what type of treatment she requires. The record also fails to offer any prognosis for the applicant's spouse's health concerns. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)).

The applicant's spouse states that she and the applicant would like to start their lives and build their future together. *Statement from the applicant's spouse*, undated. The AAO acknowledges the difficulties faced by the applicant's spouse in being separated from the applicant. 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 AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

However, as the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility to the United States if she resides in the United States, the applicant is not eligible for a waiver of his inadmissibility under section 212(a)(2)(A) 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.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.