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



U.S. Citizenship
and Immigration
Services

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FILE:

Office: ATHENS, GREECE

Date:

SEP 03 2009

IN RE:

APPLICATION:

Application for Waiver of Grounds of Inadmissibility under sections 212(h), 8 U.S.C. § 1182(h); 212(i), 8 U.S.C. § 1182(i); and 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), of the Immigration and Nationality 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.

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 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, [REDACTED], 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 been convicted of committing a crime involving moral turpitude; section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation; and section 212(a)(9)(B)(i)(II) of 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.

The applicant is married to a naturalized citizen of the United States. The applicant sought a waiver of inadmissibility pursuant to sections 212(h), 8 U.S.C. § 1182(h); 212(i), 8 U.S.C. § 1182(h); and 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), of the Act so as to immigrate to the United States. The OIC concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the OIC*, dated July 12, 2007. The applicant submitted a timely appeal.

On appeal, [REDACTED], the applicant's spouse, states in a letter that if her husband is not granted admission into the United States it would cause her and her family extreme hardship. She states that her marriage is not accepted in Israel, she would be discriminated against, and would not have equal rights as a Russian Orthodox. She conveys that in Israel she hides the fact that she is Russian Orthodox. She states that she cannot be a resident of Israel because she is a U.S. citizen and it is becoming difficult to extend her tourist visa to Israel. Ms. [REDACTED] states that she does not have a permit to work in Israel and does not speak or read Hebrew. Her husband's income, she states, is minimal and her parents can no longer financially assist them. She states that because she is not Jewish she cannot take her husband's last name and her children will not have equal rights in Israel because she is not Jewish. Ms. [REDACTED] indicates that she cannot afford medical insurance or to study Hebrew and will not be able to obtain a higher education.

The AAO will first address the finding of inadmissibility.

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

(A)(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 (other than a purely political offense)
or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The Indictment Letter to the Magistrates' Court of Ramle reflects that on June 6, 2002, at passport control at the Gen-Gurion Airport the applicant presented his passport, which contained two counterfeit stamps that he alleged were received from the Ben-Gurion Airport on March 10, 2002 (exit) and July 25, 1999 (entrance). The applicant was charged with the forgery of a document under aggravated circumstances, clause 418 of the Criminal Code of 1977; and utilization of a forged passport, clause 8-a-2 of the Passports Law of 1952. He was sentenced to imprisonment, probation, and community service.

In *Matter of Serna*, 20 I&N Dec. 579 (BIA 1992), the Board of Immigration Appeals (BIA) held that use and possession of an altered visa with knowledge that it was altered was found to be a crime involving moral turpitude. The applicant was convicted of forging a document and using a forged document. In light of *Matter of Serna*, his crime is one involving moral turpitude, the OIC was correct in finding him inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I).

A waiver is available for inadmissibility 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) . . . 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 applicant was also found inadmissible for misrepresentation.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

(i) Any alien who, 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 of Sworn Statement shows that the applicant entered the United States on July 7, 1999 and returned to Israel on March 20, 2002. However, the stamp in the applicant's passport indicated that he entered Israel on July 25, 1999. The applicant admitted to paying [REDACTED] for counterfeit stamps and obtaining the stamps to visit the United States. He further admitted to attempting to gain admission into the United States on May 1, 2002, through the port of entry in Toronto, Canada. According to U.S.

Citizenship and Immigration Services (USCIS) records, the applicant sought to gain entry into the United States through Canada a second time in May 2002, and on June 5, 2002 he sought to gain admission into the United States at the port of entry at the JFK International Airport in New York. Based upon the applicant's sworn statement and his repeated attempts to gain entry into the United States using the counterfeit stamps, the OIC was correct in finding him inadmissible under section 212(a)(6)(C) of the Act as seeking to gain admission to the United States by using counterfeit stamps in order to conceal the material fact that he had overstayed his prior visit to the United States.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states that:

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Lastly, the applicant was found inadmissible under section 212(a)(9)(B)(i)(II) of 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.

Inadmissibility for unlawful presence is found under section 212(a)(9) of the Act. That section provides, in part:

(B) Aliens Unlawfully Present

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

- (I) was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States . . . and again seeks admission within 3 years of the date of such alien's departure or removal, or
- (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.

....

Unlawful presence accrues when an alien remains in the United States after period of stay authorized by the Attorney General has expired or is present in the United States without being admitted or paroled. Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii). For purposes of section 212(a)(9)(B) of the Act, time in unlawful presence begins to accrue on April 1, 1997.¹

The three- and ten-year bars of sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), are triggered by a departure from the United States following accrual of the specified period of unlawful presence. If someone accrues the requisite period of unlawful presence but does not subsequently depart the United States, sections 212(a)(9)(B)(i)(I) and (II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I) and (II), would not apply. *See* Memo, note 1.

USCIS records reflect that the applicant entered the United States on July 7, 1999 on a visitor's visa and was admitted until January 2000. The applicant was granted extension of stay on two occasions. His third application for an extension of stay was denied on August 27, 2001. He subsequently filed two additional applications, but, since he was not in status at the time they were filed, they were not properly filed and have no effect on his unlawful presence.

Section 212(a)(9)(B) of the Act states in pertinent part:

(iv) Tolling for good cause.-In the case of an alien who-

(I) has been lawfully admitted or paroled into the United States,

(II) has filed a nonfrivolous application for a change or extension of status before the date of expiration of the period of stay authorized by the Attorney General, and

(III) has not been employed without authorization in the United States before or during the pendency of such application, the calculation of the period of time specified in clause (i)(I) shall be tolled during the pendency of such application, but not to exceed 120 days.

The applicant therefore began accruing unlawful presence on August 27, 2001, the date of the denial of his third application. The record indicates he returned to Israel on March 20, 2002. At that point he had accrued more than 180 days, but less than one year of unlawful presence and was

¹ Memorandum by Lori Scialabba, Assoc. Director, Refugee, Asylum and International Operations Directorate and Pearl Chang, Acting Chief, Office of Policy and Strategy, Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 212(a)(9)(C)(i)(I) of the Act; AFM Update AD 08-03; May 6, 2009.

inadmissible under section 212(a)(9)(B)(i)(I) of the Act and barred from admission for three years. As is has now been more than three years since his departure, he is no longer inadmissible under section 212(a)(9)(B) of the Act. However, as noted previously, he is inadmissible under section 212(a)(2)(A) of the Act for committing a crime involving moral turpitude and section 212(a)(6)(C) of the Act for misrepresentation, and requires waivers of those grounds of inadmissibility.

A waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant, and children are included as a qualifying relative under section 212(h). The applicant and his spouse have no children. The only qualifying relative in this case is the applicant's spouse who is a naturalized citizen of the United States. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

In an undated letter, [REDACTED] states that her husband has been in Israel for nearly five years and separation has caused her extreme hardship. She states that she was studying in New York for two years, from 2000 to 2002, and stopped because she and her husband could no longer afford her education. She states that she works as a professional personal banker and is unable to be promoted to a higher position because she takes leaves of absence to be with her husband. [REDACTED] states that her husband is a handyman in Israel and barely earns enough money for them to survive. She conveys that her parents are paying the mortgage on a condominium that she and her husband bought under her parents' name. She states that all of her family members live in the United States, that she and her husband cannot afford to have children in Israel, that she will have problems in

Israel because she is not Jewish, and that she and her husband married in Cyprus because Israel's government does not accept non-Jewish marriages.

Applying the *Cervantes-Gonzalez* factors here, extreme hardship to [REDACTED] must be established if she remains in the United States without her husband, and alternatively, if she joins the applicant to live in Israel. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

Courts have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[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." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). As stated in *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon deportation and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)).

The applicant's wife is very concerned about separation from her husband. The AAO is mindful of and sympathetic to the emotional hardship that is endured as a result of separation from a loved one. However, no evidence has been presented to establish that the hardship in this case is beyond that which is normally experienced in most cases of removal. Accordingly, the AAO finds that the applicant has not established that his wife would experience extreme hardship if she remained in the United States without him.

With regard to joining the applicant to live in Israel, although [REDACTED] claims that she and her children would experience various forms of discrimination in Israel, there is no documentation in the record in support of her claim. 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). [REDACTED] has not explained why, although she is married to an Israeli citizen, she is ineligible for a work permit and cannot reside in Israel; nor has she provided documentation in support of her claims. [REDACTED] states that her husband does not earn a sufficient income to support them or permit her to study Hebrew or attend school; however, no documentation of the applicant's monthly income and expenses in Israel has been submitted so as to support [REDACTED] statement. It is noted that the applicant claimed in his sworn statement

dated June 5, 2002, that he is a partner with his brother in a “big meat store” in Israel. Ms. [REDACTED] claims that she would be unable to obtain employment in Israel. However, she has submitted no documentation of Israel’s job market in support of her claim. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra.* [REDACTED] states that she has no family members in Israel. She will not be alone in Israel, [REDACTED] has her husband and in-laws there.

Having carefully considered each of the hardship factors raised both individually and in the aggregate, it is concluded that these factors do not constitute extreme hardship to the applicant’s spouse. 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. The applicant has not met that burden. Accordingly, the appeal will be dismissed. The application will be denied.

ORDER: The appeal is dismissed. The application is denied.