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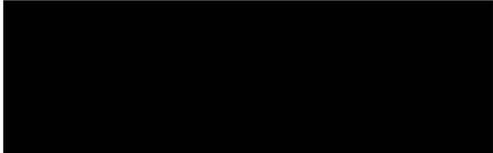
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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship
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Services

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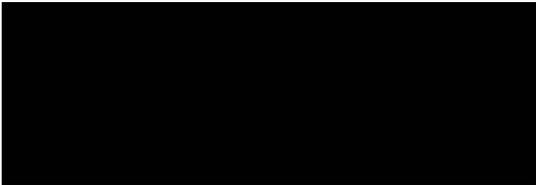
FILE: [REDACTED] Office: CLEVELAND (CINCINNATI)

Date: SEP 08 2009

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under sections 212(h), 8 U.S.C. § 1182(h), and 212(i), 8 U.S.C. § 1182(i), of the Immigration and Nationality Act.

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.

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 District Director, Cleveland Ohio, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The application will be approved.

The applicant, [REDACTED] was born in Jordan and is a citizen of Palestine. He was found to be inadmissible to the United States pursuant to 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.

[REDACTED] is married to a U.S. citizen, Mr. [REDACTED] sought a waiver of inadmissibility pursuant to section 212(i), 8 U.S.C. § 1182(h), of the Act. The director concluded that [REDACTED] 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 District Director*, dated May 30, 2007. The applicant submitted a timely appeal.

On appeal, counsel states that the director erred in denying the waiver application. Counsel contends that [REDACTED] wife and his step-children are non-Arabs and would not assimilate or be safe in Jordan or the West Bank. Counsel submits letters and consular information sheets in support of his contention.

The AAO will first address the finding of inadmissibility.

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 shows that [REDACTED] admitted that in August 2005 he misrepresented his marital status in his visa application by claiming to be married in order to obtain a nonimmigrant visa. In view of his admission, the applicant is inadmissible under section 212(a)(6)(C) of the Act for willfully misrepresenting the material fact of his marital status so as to procure a nonimmigrant visa.

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.

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. Hardship to an applicant and to his or her child are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act. Thus, hardship to the applicant and his U.S. citizen step-children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. citizen spouse. 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 support of the waiver application, the record contains letters by the applicant and his wife, and their friends; employment letters; wage statements; medical records; consular information sheets; a travel warning; and other documentation.

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

Collectively, letters convey that she visits a specialist for asthma, that she stops breathing when asleep, and that desert heat will affect her breathing. She states that her husband's

country would be too hot for her and that she must have air conditioning. [REDACTED] states that she no longer works because of her breathing and foot problems, and takes care of her children at home. [REDACTED] states that she does not want to join her husband in his country because she fears she and her children would be killed. She states that she would not be able to adapt to life there and her sons would not be able to attend school because they speak only English and they will not know the culture. The letter by [REDACTED] states that he does not want his son to leave the country. [REDACTED] indicates that her only family in Ohio is her mother and that her mother is in the process of signing up for social security. [REDACTED] states that she has not completed her General Education Diploma (GED

Medical records of [REDACTED] reflect that she has asthma for which she takes medication and was diagnosed with asthma with acute exacerbation on February 14, 2007, at the Miami Valley Hospital Emergency and Trauma Center. The letter by the manager of the Gettysburg Clark Station confirms that [REDACTED] is no longer an employee as of February 10, 2007.

The applicant conveys in a letter dated March 7, 2007, that he is afraid to bring his wife and children to his country because of the war. He states that his mother told him not to return home because Israelis are breaking into houses and killing people. He states that it would be impossible for his wife and children to receive an education in his country because they do not translate into English. [REDACTED] is employed full-time at a Quickstop Market in Ohio, according to the store's manager in a letter dated February 15, 2007.

The letter by [REDACTED] states that she has known [REDACTED] for five years and that before [REDACTED] met her husband her life was unstable and that [REDACTED] helped her straighten up her life.

The consular information sheet on Jordan dated November 15, 2006, conveys that there have been terrorist threats and activities in Jordan and that terrorists often target areas frequented by Westerners such as schools places of worship, and expatriate residential areas, and that anti-American and anti-Western sentiment exists in Jordan. The Travel Warning issued on January 17, 2007, conveys that daily incidents of intra-Palestinian violence occurs in the West Bank. It states that militant groups operate in the West Bank and that U.S. citizens have been injured or killed in terrorist actions. Israeli security forces report they receive information of planned terrorist attacks in and around Jerusalem. The consular information sheet dated February 8, 2006, conveys that access to the West Bank has been closed off by the Israeli Government during periods of unrest. Americans have been killed, seriously injured, detained and deported as a result of encounters with Israeli Defense Forces operations in the West Bank.

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 AAO finds that in view of [REDACTED] financial reliance upon her husband, the hardship that she would experience if she remained in the United States rises to the level of extreme. In the past [REDACTED] has only been employed at minimum wage and has minimal education, therefore, even if she were able to obtain employment it would be insufficient to support her family without the support of the applicant.

Furthermore, in light of the submitted documentation about the lack of safety in Jordan and the West Bank, and in consideration of [REDACTED] concern about the well-being of herself and her children in Jordan and the West Bank, and her unfamiliarity with their culture and language, the AAO finds that, when considered cumulatively, the record establishes that [REDACTED] would experience extreme hardship if she were to join her husband to live in the West Bank or Jordan.

The factors presented do in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act.

The grant or denial of the above waiver does not depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted.

The favorable factors in this matter are the extreme hardship to the applicant's spouse and his U.S. citizen step-sons, and the letters from his wife, landlord, and friends commending his character,. The unfavorable factors in this matter are the applicant's misrepresentation, and periods of unauthorized employment. The AAO notes that the applicant does not appear to have committed any crimes.

While the AAO cannot emphasize enough the seriousness with which it regards the applicant's breach of the immigration laws of the United States, the AAO finds that the hardship imposed on the applicant's spouse as a result of his inadmissibility outweighs the unfavorable factors in the application. Therefore, a favorable exercise of the Secretary's discretion is warranted in this matter.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act 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. The applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The waiver application is approved.