

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

**U.S. Department of Homeland Security**  
U.S. Immigration and Citizenship Services  
*Office of Administrative Appeals*  
20 Massachusetts Avenue, N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



H2

[Redacted]

Date: **APR 20 2012** Office: MIAMI, FL FILE: [Redacted]

IN RE: Applicant: [Redacted]

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:  
[Redacted]

**INSTRUCTIONS:**

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Michael Shumway*  
for Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Oakland Park, Florida, 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 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 director stated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director 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.

On appeal, counsel challenges the director's finding that the applicant's U.S. citizen spouse will not suffer extreme hardship if the waiver is denied. Counsel states that the applicant's wife's U.S. citizen son, mother, father and siblings all reside in the United States and that the applicant's wife's mother is recovering from cancer. Counsel cites U.S. Department of State documents to substantiate the applicant's wife's concern about violence in Israel. Counsel maintains that it will be obligatory for the applicant's 17-year-old stepson to serve in the Israel military if he joins the applicant and his mother to live in Israel. Counsel states that the applicant's stepson has behavioral problems and is home schooled, and that lack of command of the Hebrew language will make studying difficult. Counsel declares that in joining the applicant in Israel the applicant's wife will not only have to close the business she started in 2006, but will have to deal with Israel's economic crisis. Additionally, counsel states that Ninth Circuit decisions convey that family separation establishes extreme hardship and that in the instant case the cumulative effect of separation from family members establishes extreme hardship. Finally, counsel states that [REDACTED] psychological evaluation establishes extreme hardship to the applicant's wife.

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

(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 record reflects that on April 22, 2004 the applicant pled guilty to and was convicted of conspiracy to commit wire and mail fraud in violation of 18 U.S.C. § 371. The judge sentenced the applicant to serve two years of probation and ten months of home detention electronic monitoring, and ordered that the applicant make restitution.

As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the director.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is under section 212(h) of the Act. That section 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 . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. 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).

Extreme hardship is “not a definable term of fixed and inflexible content or meaning,” but “necessarily depends upon the facts and circumstances peculiar to each case.” *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one’s present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm’r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be

considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “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.” *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In rendering this decision, the AAO will consider all of the evidence in the record.

Counsel’s claim of emotional hardship to the applicant’s wife due to separation from the applicant is consistent with the [REDACTED] psychological evaluation dated April 25, 2008 and the applicant’s wife’s letter dated January 15, 2009. The applicant’s wife conveyed in her letter that she and her son have a close bond to the applicant and will be devastated if separated from him and that she depends on the applicant to establish her business. [REDACTED] indicated that the applicant’s wife will experience “an escalating degree of emotional distress until it becomes severe.” While we acknowledge that the applicant’s wife and son will experience hardship due to separation from the applicant, the record does reveal emotional support from the applicant’s in-laws, who live in New York, and the applicant has not adequately demonstrated that his wife’s business will be in peril if he leaves the United States. When the asserted hardships are considered collectively, we find they do not establish that the hardship that the applicant’s wife and son will experience as a result of separation is more than the common result of inadmissibility or removal.

In regard to relocation with the applicant to Israel, the applicant’s wife stated that her son is being home schooled due to his behavioral problems as well as his lack of judgment in making decisions. The applicant’s wife indicated that she is distressed about having to either separate from her son or having him live in Israel and being drafted into Israel’s military, where his life will be at risk. The applicant’s wife maintained that in Israel she will be forced to separate from her parents and siblings in the United States and will be especially devastated if her mother’s cancer reoccurs. She expressed concern about having to close her business and struggling financially in Israel. The applicant’s stepson indicated that he will join his mother to live in Israel if she decided to move there. The submitted U.S. Department of State travel warning described the general security environment in

Israel, the West Bank, and the Gaza Strip. U.S. Department of State, Bureau of Consular Affairs, Travel Warning – Israel (January 15, 2009). The U.S. Department of State's report stated that Israel has a population of approximately 7.3 million people, including Israelis living in the occupied territories, and that 24 civilians in Israel died from Palestinian rocket and terrorist attacks. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2009: Israel and the occupied territories*, 1 (February 25, 2009). The record reflects that the applicant lived for seven years in Holon, Israel, a district in Tel Aviv. In view of the evidence in the record, we find that the applicant has not fully demonstrated that his wife and stepson will be at grave risk of harm if they joined the applicant to live in Tel Aviv. Additionally, in regard to the laws requiring service in Israel's military, the U.S. Department of State stated that:

Israeli citizens naturalized in the United States retain their Israeli citizenship, and children born in the United States to Israeli parents usually acquire both U.S. and Israeli nationality at birth. Israeli citizens, including dual nationals, are subject to Israeli laws requiring service in Israel's armed forces, as well as other laws pertaining to passports and nationality. U.S.-Israeli dual nationals of military age, including females, who do not wish to serve in the Israeli armed forces should contact the Israeli Embassy in Washington, D.C., to learn more about an exemption or deferment from Israeli military service and should obtain written confirmation of military service exemption or deferment before traveling to Israel.

U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information – 2009: Israel* (June 12, 2009). Thus, as the applicant's stepson might qualify for an exemption, we find that the applicant has not fully demonstrated that his stepson will be required to serve in the Israeli armed forces. Lastly, the applicant's wife's claim that they will struggle financially in Israel is not sufficiently supported by the furnished evidence as the submitted article about Israel's economy stated that unemployment could reach 8 percent at the end of 2009. This does not establish that the applicant and his wife will not be able to either obtain jobs for which they are qualified in Israel or start their own business there, as the record shows that the applicant's wife is not only educated, but has acquired skills and knowledge in the real estate field and in operating her own businesses since 2003. Additionally, the record shows that the applicant was a self-employed disc jockey in Israel for seven years and that he has worked in that occupation in the United States. In regard to family separation, the record shows that the applicant's wife already lives away from her family members as they live in New York even while she has lived in Florida since she was 18 years old. In regard to the applicant's stepson, the record indicates that he is now 20 years old. He has the choice of remaining in the United States or joining his mother to work or study in Israel. We recognize that the applicant's wife and stepson will leave behind their life and family members in the United States in joining the applicant to live in Israel, but they do have ties to Israel: the applicant's mother and sister. When the emotional and financial hardships are considered collectively, we find that the applicant has not demonstrated that his wife and stepson will experience extreme hardship in Israel.

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 rests with the applicant. See section 291 of the Act. Here, the

applicant has not met that burden. Accordingly, the appeal will be dismissed and the waiver application will be denied.

**ORDER:** The appeal is dismissed.