



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF A-A-H-G-

DATE: JUNE 8, 2016

APPEAL OF NEBRASKA SERVICE CENTER DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native of the West Bank, Israel, seeks a waiver of grounds of inadmissibility for unlawful presence and a crime involving moral turpitude. *See* Immigration and Nationality Act (the Act) sections 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), and 212(h), 8 U.S.C. § 1182(h). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The U.S. consular office found that the Applicant was inadmissible for having been: 1) unlawfully present in the United States for more than 1 year and seeking readmission within 10 years of his last departure; 2) convicted of a counterfeiting/trademark infringement offense, a crime involving moral turpitude; 3) ordered removed and seeking admission within 10 years of the date of his removal from the United States; and 4) for engaging in terrorist activities. *See* sections 212(a)(9)(B)(i)(II), 212(a)(2)(A)(i)(I), 212(a)(9)(A)(ii)(I), and 212(a)(3)(B) of the Act. The Applicant subsequently filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, with the Nebraska Service Center.

The Director, Nebraska Service Center, denied the application. The Director concluded that the Applicant was inadmissible under sections 212(a)(9)(B)(i)(II) and 212(a)(2)(A)(i)(I) of the Act, for which discretionary waivers of inadmissibility exist under sections 212(a)(9)(B)(v) and 212(h) of the Act. The Director found, however, that the Applicant would remain inadmissible even if waivers were granted under sections 212(a)(9)(B)(v) and 212(h) of the Act. Specifically, the Director determined that the Applicant was also inadmissible under section 212(a)(3)(B)(i)(I) of the Act, and that no waiver was available for this ground of inadmissibility. Because the Applicant would remain inadmissible even if waivers were granted for his remaining grounds of inadmissibility, the application was denied in the exercise of discretion.<sup>1</sup>

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<sup>1</sup> The Director also found that the Applicant was inadmissible under section 212(a)(9)(A)(ii)(I) of the Act, that no waiver of inadmissibility corresponds to this ground of inadmissibility, and that the Applicant must instead obtain consent from USCIS in order to reapply for admission into the United States. The Applicant filed a Form I-212, Application for Permission to Reapply for Admission, which the Director denied on March 23, 2015, in the exercise of discretion.

The matter is now before us on appeal. In the appeal, the Applicant asserts that he is not inadmissible under section 212(a)(3)(B)(i)(I) of the Act for engaging in terrorist activities. The Applicant also contests the finding that he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of a crime involving moral turpitude, and he asserts that his conviction falls under the petty offense exception set forth in section 212(a)(2)(A)(ii)(II) of the Act. The Applicant does not contest his inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for 1 year or more and seeking admission within 10 years of his removal from the country, and he asserts that the evidence in the record demonstrates that his U.S. citizen spouse will experience extreme hardship if he is denied admission into the United States.

With regard to his inadmissibility under § 212(a)(3)(B)(i)(I) of the Act, the Applicant initially asserted on appeal that the U.S. consular office did not find him to be inadmissible on this ground, and that the Director erroneously found him to be inadmissible for terrorist activities, namely for throwing stones at Israeli soldiers and Israeli settlers. We informed the Applicant, however, in a notice of intent to dismiss (NOID) letter sent on February 16, 2015, that evidence in the record demonstrated that on January 22, 2015, the U.S. consular office in Jordan found the Applicant to be inadmissible under section 212(a)(3)(B) of the Act. We also informed the Applicant, in the NOID, that evidence in the record demonstrated that he stated on his asylum application, during his immigration court proceedings, and on appeal to the Board of Immigration Appeals, that he took part in violent demonstrations in the West Bank and intentionally stoned Israeli soldiers during the demonstrations. The Applicant responded to our NOID by reasserting his initial appeal claims. He asserted further that his previous attorney forced him to make untrue statements on his asylum application and during his immigration court proceedings. The Applicant also asserted that if he is found to be inadmissible for willful misrepresentation of a material fact based on his asylum claims, he qualifies for a discretionary waiver of this ground of inadmissibility under section 212(i) of the Act.

The Applicant also stated in his NOID response that the U.S. Consulate General in Jerusalem consented to giving him a new immigrant visa interview to determine if the terrorist related finding against him was improper. On this basis, the Applicant requests that we either sustain his appeal or hold the appeal in abeyance pending the outcome of the new interview. Despite this assertion, however, the Applicant presented no evidence to corroborate his claim that the U.S. Consulate General has scheduled a new interview for him, or that the Department of State is considering withdrawal of its finding that the Applicant is inadmissible under section 212(a)(3)(B) of the Act. The Applicant also provided no legal basis for the request that we hold his appeal in abeyance in order to wait for the outcome of a possible immigrant visa interview. We will therefore adjudicate the Applicant's appeal based on the evidence in the record.

The record includes documentation related to the Applicant's asylum application; declarations from the Applicant, his family, and friends; medical and school records; country conditions information; and documents pertaining to relationships, identity and immigration status.

Upon *de novo* review, we will dismiss the appeal.

## I. LAW

The Applicant is seeking admission as an immigrant. He has been found inadmissible under section 212(a)(9)(B)(i)(II) of the Act, for having been unlawfully present in the United States for more than 1 year between 2000 and 2007, and seeking readmission within 10 years of his last departure from the country. He has also been found inadmissible under section 212(a)(2)(A)(i)(I) of the Act for his conviction, on [REDACTED] 2003, for a Counterfeit Trademark Act violation. In addition, the Applicant has been found inadmissible under section 212(a)(3)(B)(i)(I) of the Act, for having engaged in terrorist activities – specifically, for stoning Israeli soldiers during demonstrations in the West Bank. Because there is no waiver available for a ground of inadmissibility under section 212(a)(3)(B)(i) of the Act, and the Applicant would therefore remain inadmissible even if waivers were granted for his remaining grounds of inadmissibility, we will address this ground of inadmissibility first.

Under section 212(a)(3)(B)(i)(I) of the Act, a foreign national who has engaged in a terrorist activity is inadmissible. Section 212(a)(3)(B)(iv)(I) of the Act provides, in relevant part, that

the term ‘engage in terrorist activity’ means, in an individual capacity or as a member of an organization -

(I) to commit or to incite to commit, under circumstances indicating an intention to cause death or serious bodily injury, a terrorist activity.

Section 212(a)(3)(B)(iii) of the Act provides, in pertinent part, that

the term ‘terrorist activity’ means any activity which is unlawful under the laws of the place where it is committed (or which, if it had been committed in the United States, would be unlawful under the laws of the United States or any State) and which involves any of the following . . . (V) The use of any . . . (b) . . . weapon or dangerous device (other than for mere personal monetary gain), with intent to endanger, directly or indirectly, the safety of one or more individuals or to cause substantial damage to property.

## II. ANALYSIS

The Director determined that the Applicant was inadmissible for having engaged in a terrorist activity (stoning Israeli soldiers), and that no waiver was available for this ground of inadmissibility. The Director denied the Applicant’s Form I-601 in the exercise of discretion, because he would remain inadmissible even if he were granted waivers for his remaining grounds of inadmissibility under sections 212(a)(9)(B)(i)(II) and 212(a)(2)(A)(i)(I) of the Act. On appeal the Applicant claims that he did not engage in a terrorist activity, that the [REDACTED] was not a terrorist organization, and that his previous attorney forced him to make untrue statements on his asylum application and during his immigration court proceedings. The Applicant asserts further that even if he had been involved in throwing stones at Israeli soldiers during demonstrations, the offense would be a purely political offense

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*Matter of A-A-H-G-*

and would not require a waiver. The record includes documentation related to the Applicant's asylum application; declarations from the Applicant, his family, and friends; medical and school records; country conditions information; and documents pertaining to relationships, identity and immigration status. The entire record has been reviewed and considered in arriving at a decision on the appeal.

The Act makes clear that a foreign national must establish admissibility "clearly and beyond doubt." See section 235(b)(2)(A) of the Act. See also section 240(c)(2)(A) of the Act. The same is true for admissibility in the context of an application for adjustment of status. See *Kirong v. Mukasey*, 529 F.3d 800, 804 (8th Cir. 2008) and *Rodriguez v. Mukasey*, 519 F.3d 773, 776 (8th Cir. 2008). See also, *Blanco v. Mukasey*, 518 F.3d 714, 720 (9th Cir. 2008). We find that the Applicant has provided insufficient evidence to overcome the finding that he is inadmissible under section 212(a)(3)(B)(i)(I) of the Act for having engaged in a terrorist activity, and that there is no waiver available for this ground of inadmissibility.

#### A. Engaged in Terrorist Activity

The record reflects that the Applicant stated on his asylum application and during immigration court and appeal proceedings, that he was involved in violent demonstrations against the Israeli occupation of the West Bank, and that he stoned Israeli soldiers when he saw Israeli patrols. Specifically the Applicant stated, under penalty of perjury on his October 2000 Form I-589, Application for Asylum and Withholding of Removal, that in the summer of 1994 he became involved in the [REDACTED] he organized and led demonstrations opposing the Israeli occupation, which turned violent; and whenever he saw Israeli military patrols, he stoned the Israeli soldiers. See Form I-589, Part C, Information about Your Claim to Asylum, question 1. The Applicant stated further on his asylum application that in 1995 he again became active in the [REDACTED] and stoned patrolling Israeli military forces, and that he was arrested, interrogated, beaten and released. See Form I-589, Part C, question 3. A review of immigration court proceeding evidence contained in the record reflects that the Applicant reiterated these claims, under oath, before an immigration judge. The record reflects further that the Applicant repeated the claims on appeal to the Board of Immigration Appeals (the Board) in June 2002.

As stated above, the term "terrorist activity" refers to an activity which is unlawful under the laws of the place where it was committed, or which would be unlawful under the laws in the United States, and which involves, amongst other things, the use of any weapon or dangerous device with intent to endanger, directly or indirectly, the safety of another individual. See section 212(a)(3)(B)(iii) of the Act. The statements made by the Applicant on his asylum application, during immigration proceedings, and on appeal to the Board reflect that the Applicant admitted he took part in violent demonstrations, and that he intentionally stoned Israeli soldiers. The described activity was unlawful and could cause serious bodily injury and endanger the soldiers' safety. The activity therefore falls within the definition of a "terrorist activity", as set forth in section 212(a)(3)(B)(iii) of the Act.

The Applicant asserts that he was not "engaged in terrorist activity" because the organization referred to in his asylum claim was not designated as a terrorist organization. While the [REDACTED]

(b)(6)

*Matter of A-A-H-G-*

██████████ is not designated as a foreign terrorist organization by the Department of State, such designation is not required in order for the Applicant to be found to be inadmissible for engaging in terrorist activity.

As discussed in the Law section above, the term “engage in terrorist activity” means to commit or incite to commit, “in an individual capacity or as a member of an organization,” a terrorist activity under circumstances indicating an intention to cause seriously bodily harm. *See* section 212(a)(3)(B)(i)(I) of the Act. The definition does not state that the terrorist activity must be committed by a member of a terrorist organization. In this case, the statements that the Applicant made on his asylum application and during his immigration court and appeal proceedings, reflect that he was involved in an individual capacity or as a member of an organization, in violent demonstrations, and that he intentionally stoned Israeli soldiers, activities which fall within the definition of a terrorist activity. The record therefore reflects that the Applicant is inadmissible under section 212(a)(3)(B)(i)(I) of the Act, for engaging in terrorist activities.

#### B. Misrepresentation and Ineffective Assistance of Counsel Claim

The Applicant claims that despite his statements on his asylum application, and made during his immigration court and appeal proceedings, he was never a ██████████ and he never threw stones at Israeli soldiers. He states that instead, he was falsely accused by Israeli soldiers of throwing stones at them when he was ██████ years old, he was briefly detained, and he was released without charge. The Applicant asserts that his previous attorney forced him to make contrary statements on his asylum application and during immigration court proceedings, in order to strengthen his asylum claim. He claims that he followed his attorney’s advice because he was young, he feared returning to the West Bank, he did not understand English well, and he did not understand what was going on.

The record, however, lacks evidence to corroborate the Applicant’s assertions. Although the Applicant asserts generally that he was young and did not understand what was going on when he filed his asylum application and during immigration court and appeal proceedings, the record reflects that the Applicant was an adult, over the age of 21, when he filed his asylum application. The record reflects further that the Applicant signed his asylum application under penalty of perjury, and that his immigration court testimony was made under oath before an immigration judge. The Applicant provides no detailed information to explain why he did not understand the claims that he made on his asylum application and during his immigration court proceedings, and we find the Applicant did not demonstrate that he made the statements unknowingly, or that the statements were made out of fear or under duress.

In addition, the Applicant has not established ineffective assistance by his prior attorney. A claim of ineffective assistance of counsel requires: (1) that the claim be supported by an affidavit of the allegedly aggrieved applicant setting forth in detail the agreement that was entered into with counsel with respect to the actions to be taken and what representations counsel did or did not make to the applicant in this regard, (2) that counsel whose integrity or competence is being impugned be informed of the allegations leveled against him or her and be given an opportunity to respond, and (3) that the appeal reflect whether a complaint has been filed with appropriate disciplinary authorities with respect to any

violation of counsel's ethical or legal responsibilities, and if not, why not. *See Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988) (overruled in part in the Third Circuit, on other grounds.) Here, the record contains no evidence to demonstrate that the requirements for an ineffective assistance of counsel claim have been met, or to demonstrate affirmative misconduct by the Applicant's previous attorney. The Applicant has therefore not demonstrated that the claims made on his asylum application, and during his immigration court proceedings and on appeal, should be disregarded due to his previous attorney's advice and ineffective assistance of counsel.

### C. Political Offense Claim

The Applicant asserts that even if the asylum-related claims that he threw stones at Israeli soldiers during demonstrations were true, this would not constitute an act that intends to cause, or results in, serious bodily injury, as required under section 212(a)(3)(B)(i)(I) of the Act. He indicates that his actions would instead constitute a nuisance, and that the action would fall within the definition of a political offense because it was directed against a government entity for the political purpose of protesting Israeli occupation.

The political offense exception is referred to in section 212(a)(2)(A)(i)(I) of the Act, and applies to inadmissibility based on certain criminal and related convictions. The exception does not apply to section 212(a)(3)(B) of the Act terrorist activity inadmissibility. *See McAllister v. Att'y Gen.*, 444 F.3d 178, 188 (3d Cir. 2006) (agreeing with a Board of Immigration Appeals finding that the political offense exception does not apply to terrorist activities).<sup>2</sup> The Applicant's claim that his actions would constitute a purely political offense (which would not require a waiver of inadmissibility) is therefore not relevant to whether his actions constituted engaging in a terrorist activity, as set forth in section 212(a)(3)(B)(i)(I) of the Act.

### D. No purpose adjudicating waiver eligibility under other grounds of inadmissibility

There is no waiver available for a ground of inadmissibility under section 212(a)(3)(B)(i)(I) of the Act. Whether the Applicant's conviction for a Counterfeit Trademark Act violation under 765 ILCS § 1040/2 falls under the petty offense exception set forth in § 212(a)(2)(A)(ii)(II) of the Act, need therefore not be addressed. In addition, although the Applicant could seek a discretionary waiver for his unlawful presence and crime involving moral turpitude inadmissibility by establishing extreme hardship to a qualifying relative and that he merits an exercise of discretion, no purpose would be served in

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<sup>2</sup> Section 212(a)(2)(A)(i) of the Act pertains to inadmissibility for criminal and related convictions and provides, in pertinent part, that

Except as provided in clause (ii), any 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[.]

*Matter of A-A-H-G-*

granting such waivers if the Applicant would remain inadmissible under another provision of the Act. *See Matter of Martinez-Torres*, 10 I&N Dec. 776 (Reg'l Comm'r. 1964); *Matter of J-F-D-*, 10 I&N Dec. 694 (Reg'l Comm'r. 1963). Here, the Applicant would remain inadmissible under section 212(a)(3)(B)(i)(I) of the Act. The record therefore supports the dismissal of the Applicant's appeal based on his inadmissibility under section 212(a)(3)(B)(i)(I) of the Act.

### III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden, as he remains inadmissible under section 212(a)(3)(B)(i)(I) of the Act.

**ORDER:** The appeal is dismissed.

Cite as *Matter of A-A-H-G-*, ID# 14882 (AAO June 8, 2016)