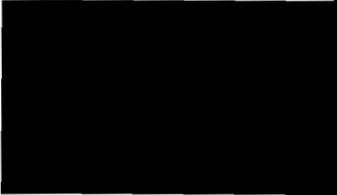




U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**



H3

FILE:

Office: ROME (TEL AVIV)

Date: **NOV 01 2008**

IN RE:

APPLICATION:

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

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The District Director, Rome, Italy, denied the waiver application. The matter 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 to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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 and seeking readmission within 10 years of her last departure from the United States. The applicant is married to a citizen of the United States and seeks a waiver of inadmissibility in order to reside in the United States with her spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated February 17, 2006.

The record shows that, on February 19, 2004, the applicant's U.S. citizen spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant which was approved the same day. The applicant appeared at the U.S. Embassy in Tel Aviv, Israel, on September 16, 2004. The applicant testified that she had been admitted to the United States as a nonimmigrant visitor on August 15, 1999 and remained in the United States until September 30, 2003. Immigration records indicate that the applicant's authorized stay in the United States expired on August 14, 2000.

On September 16, 2004, the applicant filed the Form I-601 along with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her family members.

On appeal, counsel contends that, because she was not represented at the time she submitted the Form I-601, the applicant did not present the documentation necessary to prove that her husband would suffer extreme hardship and, after retaining counsel, she is submitting documentation sufficient to prove that her husband would suffer extreme hardship. *Applicant's Brief*, dated June 15, 2006. In support of these assertions, counsel submitted the above-referenced brief, affidavits from the applicant, her spouse and her mother, country conditions reports, employment documents for the applicant and her spouse, and documentation previously provided. The entire record was reviewed and considered in rendering a decision in this case.

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

(B) Aliens Unlawfully Present.-

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

....

(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.

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The district director based the finding of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act on the applicant's admitted unlawful presence in the United States for more than one year. Counsel does not contest the district director's determination of inadmissibility.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(a)(9)(B)(v) waiver proceedings.

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 at 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien 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 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that the applicant's spouse, [REDACTED] is a dual national and citizen of Israel and the United States who was born and raised in Israel. The applicant and [REDACTED] do not have any children together. The record reflects further that the applicant and [REDACTED] are in their 20's, and [REDACTED] may have some health concerns.

Counsel contends that, even though [REDACTED] is able to support both himself and the applicant through his employment in the United States, he suffers extreme hardship due to their separation. In his affidavit, Mr. [REDACTED] states that it causes him severe emotional pain and makes him feel depressed and desperate because

he cannot live without the applicant and he suffers anguish caused by their separation and the applicant's hard living conditions in Israel. In her affidavit, the applicant states that when she talks to [REDACTED] she hears that he is deeply depressed, his daily routine is influenced by their forced separation and he cannot conduct a normal social life being separated from her.

Financial records indicate that [REDACTED] returned to the United States in January 2006 and earns approximately \$45,000 in salary in the United States. Besides the applicant's affidavit, there is no evidence to confirm that the applicant has been diagnosed with any physical or mental illness that would prevent him from performing job duties, daily activities or socializing activities. The record does not support a finding of financial loss that would result in an extreme hardship to [REDACTED] if he had to support himself and the applicant, even when combined with the emotional hardship described below.

There is no evidence in the record to suggest that [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon deportation. Besides the applicant and [REDACTED] affidavits, there is no evidence to confirm that the applicant suffers such a hard life in Israel so as to cause [REDACTED] severe emotional distress or hardship that is beyond those commonly suffered by aliens and families upon deportation. While there is evidence in the record that the applicant was unemployed from May 2005 to May 2006, counsel confirms that [REDACTED] salary is sufficient to support both himself and the applicant. While evidence in the record indicates that there are increased security and safety concerns in the West Bank and Gaza Strip, the applicant resides in the North of Israel. Moreover, [REDACTED] resided in Israel from his birth until January 2003 and then from October 2003 until January 2006. [REDACTED] in his affidavit, did not indicate that he had experienced any problems or concerns during the time that he resided in Israel. Furthermore, the record indicates that Mr. [REDACTED] has family members in Israel, such as his parents, who may be able to provide emotional, financial and physical support to the applicant in [REDACTED] absence, thereby easing his financial and emotional concerns for the applicant.

Counsel contends that [REDACTED] would suffer extreme hardship if he accompanied the applicant to Israel because he would be separated from his family in the United States, employment opportunities equal to those he has in the United States would not be available to him, his safety is compromised in Israel and sufficient medical care would not be available to him in Israel. [REDACTED] in his affidavit, states he is a true American who cannot imagine living anywhere else and that his Aunt, who resides in the United States, would miss him. He states that he does not have any employment or career prospects in Israel and that, when he tried to open a restaurant in Israel, it did not provide him with sufficient income to support himself and the applicant. Additionally, he states the security situation in Israel is unstable and he would be fearful and anxious to live there. Finally, he states that if his health deteriorates the public health care system would not be able to provide him with proper medical care, he would be unable to afford private medical care and he currently suffers from a problem in his knee.

There is no evidence in the record to suggest that [REDACTED] suffers from a physical or mental illness for which he would be unable to receive treatment in Israel. There is no evidence in the record, besides Mr. [REDACTED] affidavit, to confirm that [REDACTED] would be unable to obtain sufficient medical care in Israel. There is no evidence in the record to suggest that the applicant and [REDACTED] would be unable to find any employment in Israel. [REDACTED] states that his restaurant failed to provide sufficient income because he was inexperienced in the business and there is no evidence in the record to confirm that there are hard economical conditions in Israel that would prevent the applicant and [REDACTED] from obtaining any

employment. The record indicates that [REDACTED] has some family members, such as his parents, in Israel, who may be able to assist them financially, physically and emotionally. As discussed above, while evidence in the record indicates that there are increased security and safety concerns in the West Bank and Gaza Strip, the applicant resides in the North of Israel. Moreover, the concerns raised by counsel in regard to Mr. [REDACTED] safety due to his status as a U.S. citizen is unsupported by the record since documentation in the record reflects that kidnappings of U.S. citizens end quickly and without violence or economic loss *because* of their status as U.S. citizens. [REDACTED] resided in Israel from his birth until January 2003 and then from October 2003 until January 2006. [REDACTED] in his affidavit, did not indicate that he had experienced any problems or concerns during the time that he resided in Israel.

While the hardships [REDACTED] faces are unfortunate, the hardships he faces with regard to adjusting to a lower standard of living, separation from friends and family and the unavailability of the employment and educational opportunities available to him in the United States, are what would normally be expected with any spouse accompanying a deported alien to a foreign country. Additionally, the AAO notes that, as a citizen of the United States, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed above, he would not experience extreme hardship if he remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] will face no greater hardship than the unfortunate, but expected disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.