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



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: ATHENS , GREECE Date: JUL 01 2009

IN RE: [REDACTED]

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

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Athens, Greece. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Egypt who was found to be inadmissible to the United States pursuant 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 section 212(a)(2)(A)(i) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i), for having been convicted of a crime involving moral turpitude. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v), and section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his wife in the United States.

The officer in charge found that the applicant established extreme hardship to his U.S. citizen spouse, but denied the waiver as a matter of discretion. *Decision of the Officer in Charge*, dated July 18, 2006.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, Ms. [REDACTED] indicating they were married on March 17, 2003; two letters from [REDACTED]; copies of Ms. [REDACTED]'s medical records; letters from [REDACTED] doctors; and a copy of an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(9)(B) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), 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.

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

(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, or
- (II) A violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in Section 802 of Title 21),

is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [now, Secretary, Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) of this section and subparagraph (A)(i)(II) of such subsection . . . 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 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

In this case, the record indicates that the applicant entered the United States in September 1996 as a crewman with authorization to remain for 29 days. The applicant did not depart the United States with his vessel and unlawfully remained in the United States. On June 30, 2001, the applicant was charged with and subsequently pled guilty to uttering and publishing in violation of Michigan Penal Code § 750.249, Forgery and Counterfeiting. He was fined and sentenced to two years probation.¹

¹ The AAO notes that although the record indicates the applicant violated the terms of his probation, it appears he may have violated probation as a result of having departed the United States. The

The applicant was placed in removal proceedings in 2003. The applicant failed to appear for his hearing and was ordered removed *in absentia* by an immigration judge on November 19, 2003. After an unsuccessful appeal before the Board of Immigration Appeals, the applicant departed the United States on August 3, 2005, and has remained in Egypt since then.

The applicant accrued unlawful presence from April 1, 1997, the date of enactment of unlawful presence provisions under the Act, until his departure from the United States in August 2005. Therefore, the applicant accrued unlawful presence of eight years. He now seeks admission within ten years of his August 2005 departure. Accordingly, he is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for being unlawfully present in the United States for a period of more than one year.

In addition, the applicant is inadmissible under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), for having committed a crime involving moral turpitude. In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. However, the AAO notes that Michigan Penal Code § 750.249 is not a divisible statute. Moreover, forgery and counterfeiting have long been held to be crimes involving moral turpitude. *See Winestock v. INS*, 576 F.2d 234, 235 (9th Cir. 1978) (stating that “[a] crime having as an element the intent to defraud is clearly a crime involving moral turpitude” and holding that a violation of California Penal Code § 472 for forgery or counterfeiting of seals is a crime involving moral turpitude) (citing *Lozano-Giron v. INS*, 506 F.2d 1073 (7th Cir. 1974), and *United States v. Wilkerson*, 469 F.2d 963 (5th Cir. 1972)); *U.S. ex rel. Abbenante v. Butterfield*, 112 F.Supp. 324, 326 (D.C. Mich. 1953) (“it must be held that the forgery or the uttering of a forged prescription or any other writing with the intent to defraud the Government of the United States involves moral turpitude”); *see also Zaitona v. INS*, 9 F.3d 432, 437-38 (6th Cir. 1993) (making false statements on a driver’s license application involved moral turpitude because an element of the crime required the alien to “knowingly make a false statement or knowingly conceal a material fact,” which amounted to fraud); *Kabongo v. INS*, 837 F.2d 753, 758 (6th Cir. 1988) (alien’s convictions for making false statements and obtaining government funds by fraud involved moral turpitude because the alien made dishonest statements).

A waiver of the bar to admission 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. *See* section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 212(a)(9)(B)(v); section 212(h) of the Act, 8 U.S.C. § 212(h) (also listing an applicant’s son or daughter as a qualifying relative). Once extreme hardship is

record states the applicant was sentenced to two years probation until August 21, 2003; however, a warrant for his arrest for violating probation occurred more than two years later on November 15, 2005, after he had already departed the United States. According to [REDACTED], the applicant “faithfully appeared each and every month [for probation] for 3-1/2 years” until he was forced to leave the United States. *Letter from* [REDACTED] dated August 7, 2006.

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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These 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.

In this case, as the officer in charge found, the record shows that [REDACTED] suffers from epilepsy, requires the daily assistance of her husband, and is medically unable to move to Egypt. *Decision of the Officer in Charge, supra*; *Letter from [REDACTED] dated March 28, 2005* (stating Ms. [REDACTED] "continues to have 3-7 seizures a day"); *Letter from [REDACTED], dated January 25, 2005* (stating [REDACTED] is "medically unstable to travel"); *Letter from [REDACTED] dated January 17, 2005* (strongly recommending [REDACTED] not be left alone until her seizures are under control and stating that she is not permitted to drive under Michigan law); *Letter from [REDACTED], dated December 3, 2004* (stating [REDACTED] "requires around-the-clock supervision," including being supervised while taking a bath). The AAO agrees with the officer in charge that based on Ms. [REDACTED] medical condition, the hardship she would experience if her husband were refused admission is extreme, going well beyond those hardships ordinarily associated with deportation. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the applicant bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's criminal conviction and his unlawful presence in the United States. The favorable and mitigating factors in the present case include: the applicant's family ties to the United States, including his U.S. citizen wife and her family; the extreme hardship to the applicant's wife if he were refused admission; letters from [REDACTED] doctors describing the applicant as being "very supportive of her medical condition," and stating that he is [REDACTED]'s only caregiver and financial provider, *Letter from [REDACTED] dated March 28, 2005*, *Letter from [REDACTED] dated January 17, 2005*; and the applicant's lack of any additional criminal convictions for the past eight years.

The AAO finds that, although the applicant's immigration violation and criminal history are very serious and cannot be condoned, when taken together, the favorable factors in the present case

outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.