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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

[redacted]

H6

FILE: [redacted] Office: JACKSONVILLE, FLORIDA Date: APR 0 7 2010

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Jacksonville, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 ten years of his last departure from the United States. The applicant is the spouse of a U.S. citizen and seeks a waiver of inadmissibility to reside in the United States.

In a decision dated July 28, 2007, the field office director found that the evidence submitted did not establish that the applicant's inadmissibility to the United States would result in extreme hardship to the applicant's spouse. The application was denied accordingly.

In a Notice of Appeal to the AAO dated August 26, 2007, counsel states that the field office director's decision is an abuse of discretion and that the applicant's assertions of hardship to his spouse and stepson were not meaningfully considered. Counsel also states that the applicant's spouse would suffer extreme hardship in leaving her child and relocating to a country where she has no ties, and that separation also would cause extreme hardship.

The record indicates that the applicant entered the United States with a B2 visitor's visa on April 11, 1983 with an authorized period of stay until October 10, 1983. The applicant applied for and was granted an extension of stay until March 10, 1984. On August 22, 2000 the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) and an Application for Advanced Parole (Form I-131). On September 6, 2000 the applicant's Form I-131 was approved and on January 21, 2001 the applicant was paroled into the United States. Therefore, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions were enacted until August 22, 2000 the date his Form I-485 was filed. The applicant subsequently departed the United States and returned pursuant to parole. In applying for adjustment of status, the applicant is seeking admission within ten years of his departure from the United States which occurred sometime between September 7, 2000 and January 20, 2001. Therefore, the applicant is inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for being unlawfully present in the United States for a period of more than one year.

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 AAO notes that section 212(a)(9)(B)(v) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relative that qualifies is the applicant's spouse. Hardship to the applicant or the applicant's step child is not considered under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

The AAO notes that in *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the

separation of the alien from family living in the United States", and that, "[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." (Citations omitted). Although the present case did not arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Court defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant and in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record of hardship includes a letter from the applicant's current counsel, a brief from the applicant's previous counsel, a statement from the applicant's spouse, a letter from the applicant's mother-in-law, a psychological evaluation for the applicant and his spouse, and reports regarding the conditions in Israel.

In his letter dated September 10, 2007, counsel states that the field office director erred in not taking into account that the applicant's spouse was born in the United States, has a 19-year-old son that has developed a father-son relationship with the applicant, that the applicant and his spouse have been married for over eight years, and that all of the applicant's spouse's family members reside in the United States. Counsel also states that the applicant's inadmissibility puts his spouse in the position of either having to stay in the United States without her spouse or relocate to Israel where she will not see her family, including her son, because of the cost and time involved in travel. Counsel also makes note of the psychological evaluation submitted in support of the hardship the applicant's spouse is facing and will continue to face as a result of the applicant's inadmissibility. Finally, counsel asserts that when viewed in the aggregate the applicant's spouse has shown that she would suffer extreme hardship.

The applicant's prior counsel states in an undated brief that the applicant's spouse has never been to Israel and that she and her son cannot move to Israel, a country at war, where they will not be

able to find a job. Counsel states further that the applicant and his spouse are home, business, and car owners.

In a letter dated June 26, 2006, the applicant's spouse states that in 1997 she had severe problems with alcohol and did not have custody of her son. She states that after she met the applicant her life made a turn for the better. She states that in 1999 she married the applicant and started to spend time with her son again. She states that her son has grown close to the applicant. She also states that she has never been outside the United States and does not speak Hebrew or any other foreign language, so she does not feel that she could readjust her life to live in a foreign country. The applicant's spouse states further that separation will be an extreme hardship for her because she is recovering from her problems with alcohol. She states that since she has been with the applicant she does not drink as much as she used to, that she has sought some treatment, and that she attends Alcoholics Anonymous. She states that if she loses her husband she is afraid the stress of living on her own will cause her to relapse. In addition, she states that although she works, her income is not enough to support a decent life or to allow her to help her son.

In an undated letter the applicant's mother-in-law states that she cannot imagine anything more devastating to her daughter than to have the applicant removed from the United States. She states that her daughter has suffered from emotional instability since adolescence and has a problem with alcohol for which she is currently in a treatment program. She states that the stress resulting from her daughter's fear of losing the applicant is taking a toll on her daughter's stability and resolve. The applicant's mother-in-law also makes reference to her daughter once being in intensive care and states that she does not want that to happen again.

In a psychological evaluation dated April 10, 2002, [redacted] states that the applicant's spouse indicates that she does not want to relocate to Israel where she does not speak the language or understand the culture as she is not Jewish. [redacted] also states that the applicant's spouse relies on the applicant for her emotional stability as she has been married three times before, with each marriage only lasting less than a year. He states that the applicant's spouse fears she may drop back into her old drinking habits without her husband's day-to-day support. [redacted] observed that the applicant and his spouse were in a committed and complementary relationship. He finds that upon separation the applicant's spouse would face an emotional and medical crisis, as she has begun to adjust to being a responsible and functional spouse and to trust a male figure for the first time in her life. [redacted] notes that substance abuse disorders are usually accompanied by a mood disorder which is either concomitant or the primary cause of the substance abuse.

Finally, the record includes country condition information from the U.S. Department of State. These reports indicate that Israel has been experiencing violence and instability in regards to its relations with the occupied territories.

The AAO finds that the applicant's spouse will experience extreme hardship as a result of the applicant's inadmissibility. The applicant's spouse has established through her statement, her

mother's letter, and a psychological evaluation that she suffers from a substance abuse problem. The AAO finds that the applicant's spouse's substance abuse problem and emotional instability, coupled with the emotional and financial stress of being separated from her spouse of over ten years, would cause her to experience extreme hardship as a result of separation.

Furthermore, the AAO finds that the applicant has shown that his spouse will suffer extreme hardship as a result of relocating to Israel. The applicant's spouse asserts that she has never been outside the United States, does not speak Hebrew, and has a U.S. citizen son that she would be separated from as a result of relocation. Again, the AAO finds that the applicant's spouse's substance abuse problem and emotional instability, coupled with the stresses of relocating to a foreign country that has been experiencing violence and instability without fluency in the native language would cause her to experience extreme hardship.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-,* 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's unlawful presence and illegal residence in the United States. The AAO notes that the applicant was arrested in 1999 for

violating state law in selling drug paraphernalia. The record does not show that the applicant was convicted of any crime or that he has any other criminal record beyond his 1999 arrest.

The favorable factors in the present case are extreme hardship to the applicant's U.S. citizen wife if he were to be denied a waiver of inadmissibility; the applicant's record as a business owner, the applicant's lack of a criminal record since 1999; and, as indicated by his spouse and his mother-in-law, the applicant's good character and attributes as a good father and husband.

The AAO finds that the immigration violations committed by the applicant are serious in nature and cannot be condoned. Nevertheless, the AAO finds that 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.