

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

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



U.S. Citizenship
and Immigration
Services



H6

FILE:



Office:



Date:

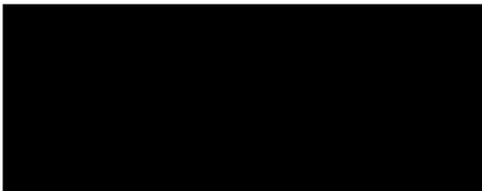
AUG 10 2010

IN RE:



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

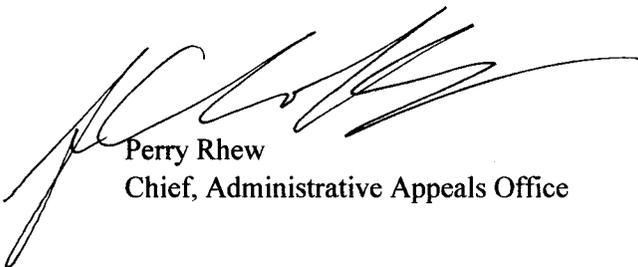
ON BEHALF OF APPLICANT:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).



Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Athens, Greece, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a 39-year-old 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. The applicant is married to a citizen of the United States, and she seeks a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with her husband and children in the United States.

The director found that the applicant failed to establish extreme hardship to her spouse, and denied the application accordingly. *Decision of the Director*, dated June 6, 2007. On appeal, the applicant contends through counsel that U.S. Citizenship and Immigration Services (USCIS) erred in denying the application because: (1) the director failed to issue a request for evidence or notice of intent to deny before denying the application; (2) the decision failed to demonstrate explicit consideration of the evidence; and (3) the evidence establishes that the denial of the waiver imposes extreme hardship on the applicant's husband. *See Form I-290B, Notice of Appeal*, dated July 5, 2007; *Brief in Support of Appeal*.

The record contains, among other things, a copy of the couple's marriage certificate; an affidavit from the applicant's husband; a letter from the applicant's husband's psychologist; financial and tax documents; documents related to the applicant's husband's real estate business in Maryland; letters and articles regarding the applicant's stepson; documentation regarding country conditions in Israel; an analysis of country conditions in Israel prepared by the director of the Institute for the Study of Israel in the Middle East; a summary of the applicant's immigration history; and a brief on appeal.

The AAO reviews these proceedings de novo. *See* 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."). The entire record was considered in rendering a decision on the appeal.

Section 212(a)(9) 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 [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 record shows that the applicant was admitted to the United States on June 23, 1997, as a nonimmigrant visitor. On her Form I-601, the applicant admits that she did not leave the United States prior to the expiration of her authorized stay, but remained until March 2, 2000. The applicant's spouse filed a Petition for Alien Relative (Form I-130) on her behalf, which USCIS approved on July 26, 2004. The applicant's unlawful presence for more than one year and departure from the United States triggered the ten-year bar in section 212(a)(9)(B)(i)(II) of the Act. See *Matter of Rodarte-Roman*, 23 I&N Dec. 905, 909 (BIA 2006).

In order to obtain a section 212(a)(9)(B)(v) waiver for unlawful presence, an applicant must show that the ten-year bar imposes an extreme hardship on the applicant's U.S. citizen or lawful permanent resident spouse or parent. See 8 U.S.C. § 1182(a)(9)(B)(v). Under the plain language of the statute, hardship to the applicant, or to his or her children or other family members, may not be considered, except to the extent that this hardship affects the applicant's qualifying relative. See *id.* (specifically identifying the relatives whose hardship is to be considered); see also *INS v. Hector*, 479 U.S. 85, 88 (1986). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States and in the event that he or she accompanies the applicant to the home country. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (en banc) (considering the hardships of family separation and relocation). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996) (en banc).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: 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 565-66. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam) (“When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.”); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *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 mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant’s spouse, [REDACTED] is a 58-year-old native and citizen of the United States. The couple has been married for nine years. The applicant has a 15-year-old daughter and a 12-year-old son from a previous marriage. Mr. [REDACTED] has a 20-year-old son from a previous marriage.

[REDACTED] contends that relocation to Israel would cause him extreme hardship. Specifically, [REDACTED] states that he has lived in Maryland since birth, and has built strong ties to his family and community. [REDACTED]. Regarding family ties, [REDACTED] states that he is extremely close to his son [REDACTED], whom he has raised as a single parent since 1995, and that separation from him would cause extreme hardship. *Id.*; *see also Letter from [REDACTED]* dated July 18, 2007. The record reflects that [REDACTED] was a high school honor roll student and exceptional baseball player with plans to attend college in the United States. *See Affidavit of [REDACTED]* *see also Letter from Eleanor Roosevelt High School*, dated Oct. 18, 2006; *Letter from George Mason University*, dated June 21, 2007; *Newspaper Articles*. Regarding community ties, Mr. [REDACTED] indicates that he is active with youth sports activities in his county, and he has

developed many close friendships in Maryland during the past 50 years. *See Affidavit of [REDACTED] supra.* Additionally, [REDACTED] has been the sole owner of a real estate consulting business since 1991. *Id.; see also documents related to [REDACTED]* Because he has no clients or contacts in Israel, no knowledge of real estate and foreclosure laws in Israel, and does not speak [REDACTED] claims that he would not be able to reestablish his business there. *See Affidavit of [REDACTED] supra; see also Expert Opinion* (concluding that [REDACTED] could not replicate his business in Israel where real estate is primarily owned by the government). Further, [REDACTED] states that he would suffer considerable financial losses if he sold his home and abandoned his business in Maryland. *Id.; see also Tax Records.* [REDACTED] also claims that he is a Methodist by birth, and that it would be extremely difficult for him to practice his religion in Israel because the United Methodist Church has no churches in Israel. *See Affidavit of [REDACTED]*. Finally, [REDACTED] claims that the unstable political climate and violent conditions in Israel would cause extreme hardship. *Id.; see also Country Conditions Information; Expert Opinion.*

Here, the evidence in the record is sufficient to support the applicant's claim that her husband would suffer extreme hardship if he relocated to Israel. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 566 (noting relevance of 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 the financial impact of departure). Given the combination of [REDACTED] strong ties to his U.S. citizen son in the United States, his business ties in his community, the evidence that he would be unable to reestablish his business in [REDACTED] and the documented country conditions in Israel, departure would cause hardships beyond what would be expected upon relocation.

[REDACTED] also contends that family separation causes extreme emotional and financial hardships. Specifically, [REDACTED] states that he is concerned about the safety of the applicant's children in Israel, noting that a car bomb exploded near their home. *See Affidavit of [REDACTED] supra; Expert Opinion; Country Conditions Information.* Additionally, [REDACTED] believes that his stepchildren would receive a more varied education in the United States. *See Affidavit of [REDACTED]* A licensed psychologist states that "[m]any aspects of [REDACTED] life have been placed on hold in anticipation of the time when he will be able to move forward in life with his wife," and the "repeated disappointments he has experienced have been extremely disheartening, frustrating, and stressful." [REDACTED]. Regarding the economic impact of separation, the record indicates that [REDACTED] sent the applicant \$14,300 in "maintenance payments" over a 16-month period in 2006 and 2007. *See Financial Documents.*

Although the record shows that separation from the applicant has caused various hardships to the applicant's husband, the evidence does not demonstrate that the difficulties meet the extreme hardship standard. First, although [REDACTED] desire to reunite with the applicant in the United States has caused "consistently high levels of stress and a life 'on hold,'" [REDACTED] *supra*, the evidence in the record does not show that that his psychological hardships are unusual or beyond what would be expected upon family separation due to one member's inadmissibility. Second, any hardships faced by the applicant and her children as a result of family separation, are

not calculated in the extreme hardship analysis, except to the extent that these hardships impact [REDACTED]. [REDACTED] See 8 U.S.C. § 1182(a)(9)(B)(v) (excluding consideration of hardship to the applicant, or to his or her children or other family members). While [REDACTED] indicates that he worries about the safety of his stepchildren in Israel, the evidence in the record does not indicate that the impact on [REDACTED] renders his hardship extreme. Third, given the evidence regarding [REDACTED] income and assets, the AAO does not find that family separation has caused extreme financial hardship.

In sum, although the applicant claims that her spouse would suffer extreme hardship based on relocation and family separation, the preponderance of the evidence does not demonstrate that the difficulties, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. See *Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. See *id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to her spouse, as required for a waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act.

Because the director is not required to issue a request for evidence or notice of intent to deny before denying an application, the applicant's contention of error lacks merit. See 8 C.F.R. § 103.2(b)(8)(iii) (stating that if the evidence does not establish eligibility, USCIS may deny an application, may request more information, or may issue a notice of intent to deny). Because the AAO has reviewed these proceedings de novo after consideration of all the evidence in the record, see 5 U.S.C. § 557(b), the applicant's claim that the director failed to demonstrate explicit consideration of the evidence is denied as moot.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.