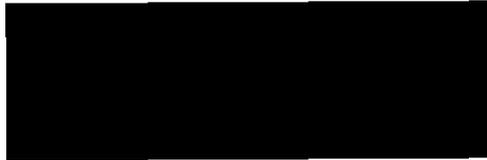




U.S. Citizenship
and Immigration
Services



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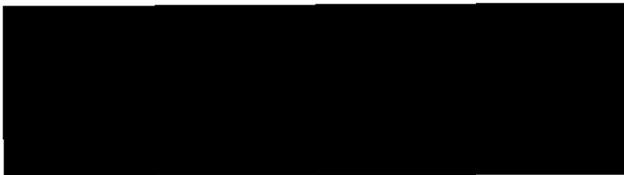
DATE: DEC 21 2012 Office: ATHENS, GREECE

FILE: 

IN RE: 

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Athens, Greece. 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 one year or more and seeking readmission within 10 years of his last departure from the United States. The applicant was also found to be inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), as an alien who has been ordered removed under section 240 or the Act, or any other provision of law and who seeks readmission within 10 years of such alien's removal from the United States. The applicant's spouse is a United States citizen and he seeks a waiver of inadmissibility in order to reside in the United States.

The Field Office Director found that the applicant failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the Field Office Director*, dated August 18, 2011.

On appeal, counsel asserts that the applicant's spouse will experience extreme hardship if the applicant is not granted a waiver of inadmissibility. *Brief in Support of Appeal*, dated October 12, 2011.

The record includes, but is not limited to, counsel's brief, the applicant's statement, the applicant's spouse's statements, letters from family and friends, medical records for the applicant's spouse, financial records and various immigration application forms. The entire record was reviewed and considered in rendering a decision on the appeal.

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 [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)(9) of the Act provides, in relevant part:

(A) Certain aliens previously removed.-

...

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

...

and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is inadmissible.

(iii) Exception.- Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [now the Secretary of Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

The record reflects that the applicant entered the United States as a B-2 nonimmigrant visitor for pleasure on March 29, 1990 and was given permission to remain until September 28, 1990. The applicant remained beyond September 28, 1990 and filed an application for asylum on December 28, 1994. This application was denied in finality after appeal on February 20, 2001. The applicant did not depart the United States at that time, and accrued unlawful presence from February 21, 2001 until his removal on July 28, 2008. The applicant now seeks readmission. The applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the

United States for one year or more and seeking readmission within 10 years of his last departure from the United States. The applicant does not contest 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 to the applicant or her child is not considered in section 212(a)(9)(B)(v) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. 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).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d 1292 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel states that the applicant's spouse has been diagnosed with situational depression, extensive anxiety and obsessive compulsive disorder; conditions that cause difficulty in conducting daily routine functions, hopelessness and thoughts of suicide. The applicant's spouse's medical evidence indicates that she was diagnosed with these conditions and is currently taking prescription medication to treat these illnesses. Counsel also indicates that the applicant's spouse is having financial difficulties since the departure of the applicant. Counsel asserts that the applicant's spouse cannot maintain their family home, the applicant's business and real estate property as well as her own long standing family business at this time because the financial burden has become too great for her to handle without the applicant. Counsel indicates that this has caused the home purchased by the applicant and in which the qualifying relative currently resides, to be placed into foreclosure as well as a buildup of significant credit card debt due to her attempts to meet monthly financial requirements. Counsel also asserts that the qualifying relative cannot relocate to live with the applicant in Israel because of strong ties with her family in the United States, a fragile mental state, and the insecurity of leaving a viable business enterprise in order to attempt to find employment in another country.

The applicant's spouse states that she is having greater difficulty in maintaining her life because of the depression and she also changed insurers to try to receive treatment and therapy. *See Statement from* [REDACTED] dated September 13, 2010. The applicant's spouse further indicates that she sometimes closes her business early because she has become progressively more stressed and depressed about the applicant's immigration issues, as well as her consequential financial situation. The applicant's spouse indicates she has trouble sleeping, suffers loss of appetite, and fatigue when thinking about the applicant living away from her in Israel. The applicant's spouse submitted a letter from a psychiatrist, [REDACTED] indicating that her conditions of severe depression, feelings of hopelessness and suicidal ideation have been exacerbated by the applicant's immigration problems. *See letter from* [REDACTED] dated September 9, 2011. [REDACTED] has also indicated that he has prescribed medication for her conditions and will be monitoring her treatment. The applicant's spouse additionally submitted a report from Psychologist, [REDACTED]

prepared for the purpose of determining her mental state due to the applicant's pending immigration matters. See *Psychologist, [REDACTED] Report*, dated September 22, 2010. In this report, the psychologist indicates that the applicant's spouse had past issues of childhood depression with multiple suicide attempts made, but did not receive treatment during those periods. [REDACTED] also indicated that according to the applicant's spouse, life is normally stressful for her, and she has a long history of mental problems but they have all been exacerbated by living away from the applicant. These symptoms include obsessive/compulsive behavior, nervousness, anxiety, suicidal ideation and loss of daily functionality.

The applicant's spouse also states that she is under financial stress due to the applicant's inadmissibility. The applicant's spouse indicates that she is attempting to maintain the home the applicant purchased where she is also currently living, while at the same time paying for the mortgage of the applicant's rental property and the expenditures for his business as well as her own enterprise. The applicant's spouse indicates she is currently using credit cards to attempt to maintain her financial obligations which is causing additional stress and the mortgages for the properties are in default. The applicant's spouse indicates her business receipts have decreased over time and she attributes this to her inability to focus on her enterprise due to her worry about the applicant and her depression based on their current separation. The applicant's spouse also indicates that she cannot visit the applicant in Israel because she cannot afford to pay for the ticket as well as compensate an employee to manage her business while she is away. The applicant's spouse also indicates that she cannot relocate to that country because she is unsure that she would be able to obtain employment and has never travelled outside the United States. The applicant's spouse also states that she does not want to leave her close knit family ties because of the bonds they have maintained through the years.

The applicant's spouse has demonstrated that the separation from the applicant has caused her to suffer negative emotional, physical and financial consequences. With the absence of the applicant from the household, the applicant's spouse has attempted to maintain the applicant's business interests as well as her own and has consequently become more mentally and fiscally stressed during this period. The applicant's spouse has also demonstrated that she is currently seeking treatment for her emotional and medical conditions which although previously present, have been exacerbated by the absence of the applicant from her life.

In addition, the stress of attempting to maintain multiple financial interests after the household income decreased due to the applicant's removal from the United States has placed additional strain upon the applicant's spouse in the years they have lived separately. The record supports that the applicant's spouse has now fallen behind in all of these obligations, and is stretching temporary alternatives such as credit cards to finance these debts. This has resulted in further strain on both her financial and emotional stability. Thus, the applicant has demonstrated extreme hardship to his spouse due to their separation.

However, the applicant has not demonstrated that relocation would cause extreme hardship to the qualifying relative. Counsel indicates that the applicant's spouse cannot move to Israel "because of her serious emotional, psychological and significant financial problems, as well as close family ties".

See brief at 9. The applicant also indicates that she would not want to leave her family behind because of their strong bonds and she would also be unsure of the possibilities for finding employment in Israel. Additionally, her family has submitted a number of letters indicating that she has never left the United States and it would be difficult for her to start over in another country.

While we acknowledge the assertions on behalf and from the applicant's spouse that she may experience emotional and economic difficulties based on relocation to Israel; the evidence does not support a finding that these issues taken individually or collectively, are substantially different in nature from what would normally be expected in circumstances such as these where the choice must be made to leave familiar surroundings and relations in order to continue a life with a loved one who is inadmissible to the United States. At this time, the applicant's spouse is struggling in the United States to maintain all of the financial obligations previously held by the applicant in addition to her own business. There has been no reasonable, significant discussion offered as to why she cannot sell or pare down these obligations in order to obtain a ticket for Israel if she desired to do so. In addition, although the applicant's spouse also indicates that she does not want to leave her family and is unsure of the employment situation within Israel, the evidence does not demonstrate that these factors although viable, would prevent the possibility of relocation. The record does not show that the applicant's spouse would be unable to visit her relatives in the United States or receive visits from them in Israel. There is also insufficient evidence that would support a finding that the applicant's spouse would be unable to find employment or enterprise in that country. The applicant was able to run a successful business for many years in addition to maintaining the applicant's enterprises in his absence, and is evidently capable of seeking out possible prospects within Israel. Moreover, there is insufficient evidence to show that the applicant's spouse would be unable to receive comparable medical and mental health care within Israel were she to relocate to that country. The AAO notes the August 9, 2012 Department of State Travel Advisory for Israel which details medical care access issues within the country. It states, in pertinent part:

Modern medical care and medicines are available in Israel. A few hospitals in Israel and most hospitals in the West Bank and Gaza, however, fall below Western standards. It is recommended that visitors have health insurance. Travelers can find information in English about emergency medical facilities and after-hours pharmacies in the Jerusalem Post and the English-language edition of the Ha'aretz newspaper, or refer to the Embassy's or Consulate General's medical lists.

Although these changes may not be easily achieved or ideal, the evidence does not sufficiently indicate taken separately or in the aggregate that they would cause the applicant's qualifying relative to suffer extreme hardship were she to decide to relocate to Israel in order to reunite with the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation and the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. See *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA

1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

Considering all of the hardship factors mentioned, there is insufficient evidence to establish the existence of extreme hardship to the qualifying relative. Having found the applicant statutorily ineligible for a waiver under section 212(a)(9)(B)(v) of the Act, no purpose would be served in assessing whether she merits a waiver as a matter of discretion.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her lawfully permanent resident spouse as required under sections 212(a)(9)(B)(v) and of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

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

The AAO notes that the field office director denied the applicant's Form I-212 Application for Permission to Reapply for Admission into the United States after Deportation or Removal (Form I-212) in the same decision. *Matter of Martinez-Torres*, 10 I&N Dec. 776 (reg. Comm. 1964), held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under section 212(a)(9)(B)(i)(II) of the Act no purpose would be served in approving the applicant's Form I-212.

ORDER: The appeal is dismissed.