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

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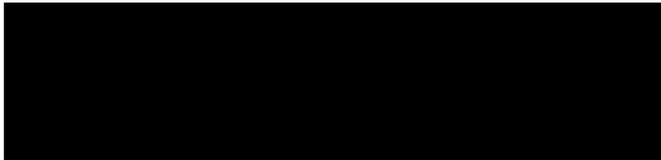
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DATE: MAY 02 2012 OFFICE: ATHENS, GREECE FILE: 

IN RE: 

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

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.

Thank you,

A handwritten signature in black ink that reads "Perry Rhew".

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 sustained.

The applicant, a native and citizen of Israel was found inadmissible under Immigration and Nationality Act (INA or the Act) § 212(a)(9)(B)(i)(II), 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 seeks a waiver of inadmissibility pursuant to INA § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his U.S. lawful permanent resident wife. He is the beneficiary of an approved Petition for Alien Worker (Form I-140) and seeks an immigrant visa.

The applicant has also been found to be inadmissible under INA § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for fraud or willful misrepresentation of a material fact due to his use of another individual's passport and visa to procure admission to the United States and his subsequent failure to disclose this information and his arrest information to immigration authorities in connection with his application for adjustment of status. The record makes clear, however, that the applicant was granted a waiver of inadmissibility under INA 212(i) by the Immigration Judge in Bloomington, MN on June 23, 2010 for this ground of inadmissibility. The applicant was also granted voluntary departure by the Immigration Judge and timely departed the United States at his own expense on October 19, 2010.

The U.S. Consulate determined that the applicant was also inadmissible under INA § 212(a)(2)(A)(i)(I) in relation to his conviction on January 12, 1993 for simple assault in violation of North Dakota Code § 12.1-17-01, a class B misdemeanor. Regardless of whether the applicant's conviction for simple assault is a conviction for a crime involving moral turpitude, he was not sentenced to any period of incarceration and the maximum sentence for a class B misdemeanor under the North Dakota Code is 30 days. As such, his offense would fall under the exception at INA § 212(a)(2)(A)(ii), and he would not be inadmissible under INA § 212(a)(2)(A)(i).

In a decision dated September 1, 2011, the Field Office Director concluded that the applicant did not meet his burden of proof to illustrate that his U.S. lawful permanent resident spouse would suffer extreme hardship and the application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant does not contest the applicant's inadmissibility, but states that the evidence illustrates that the applicant's spouse will, in fact, suffer from extreme hardship if she remains separated from the applicant and if she were to relocate to Israel to reside with the applicant.

In support of the waiver application, the record includes, but is not limited to: legal arguments by counsel for the applicant, statements by the applicant's spouse, a psychological evaluation of the applicant's spouse, country conditions reports for Israel, documentation regarding the applicant's

spouse and children, documentation regarding the applicant's spouse's financial situation, documentation regarding the applicant's employment, letters from community members regarding the applicant's moral character, documentation of the applicant's family's expenses, and documentation concerning the applicant's criminal and immigration history.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under INA § 212(a)(9)(B)(i)(II) for having been unlawfully present in the United States for one year or more.

Section 212(a)(9) of the Act provides:

(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 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 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. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

The applicant was admitted to the United States on a B2 visitor visa on October 17, 1995 with authorization to remain in the United States for a temporary period not to exceed April 16, 1996. The applicant remained in the United States until he departed on October 19, 2010 in accordance with the Immigration Judge's grant of voluntary departure in his removal proceedings. Accordingly, the applicant was unlawfully present in the United States from April 1, 1997, the effective date of the unlawful provisions of the Act, until October 16, 2006, the date on which he filed an application for adjustment of status (Form I-485). The applicant accrued one year or more of unlawful presence and is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from his departure from the United States. The applicant does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of this ground of inadmissibility under INA § 212(a)(9)(B)(v), as the spouse of a U.S. lawful permanent resident. In order to qualify for this

waiver, however, he must first prove that the refusal of his admission to the United States would result in extreme hardship to his spouse. The AAO notes that Congress did not include hardship to the applicant or the applicant's children as a factor to be considered in assessing extreme hardship in cases under INA § 212(a)(9)(B)(v) for waivers of unlawful presence. As such, hardship to the applicant or to the applicant's children will not be separately considered, except as it may affect the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (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 deportation, 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, 885 (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.*

We observe that 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., In re 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). All hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383.

On appeal, counsel for the applicant states that the applicant's U.S. lawful permanent resident spouse is experiencing extreme mental and financial hardship as a result of her husband's inadmissibility. In fact, counsel has requested expedited processing of the applicant's case due to the claimed hardship being suffered by the applicant's spouse.

in St. Louis Park, MN, provided an evaluation of the applicant's spouse, as her treating physician. is a designated civil surgeon with USCIS. states that she reviewed information provided by the applicant's spouse's treating psychologist and that she has extensive experience in evaluating Post Traumatic Stress Disorder (PTSD). Her evaluation of the applicant's spouse concludes that she is suffering from PTSD, severe major depression, and panic attacks. explains that the applicant's spouse's PTSD is a result of the violence that she experienced in Israel before she departed that country at the age of 21. The evaluation indicates that the applicant's spouse is constantly fearful about her husband, who is living in Israel, to the point that she is suffering from paranoid depression. The AAO notes the U.S. Department of State, Bureau of Consular Affairs, Travel Warning for Israel, the West Bank and Gaza, dated March 19, 2012, detailing ongoing threats of violence in Israel. reports that the applicant previously coped with her PTSD by "letting her husband manage their affairs and by completely blocking out her association with Israel," but because of her husband's immigration inadmissibility she is no longer able to cope in that manner. The record indicates that the applicant's spouse was prescribed medication for her depression, but that the applicant's spouse is resistant to taking medication and prefers therapy. Also included in the record is an evaluation by in Edina, Minnesota. evaluation is based on four sessions of individual psychotherapy with the applicant's spouse. The evaluation details the applicant's spouse's dependency on her husband before his departure and her difficulties in maintaining the household in his absence; in particular he mentions the applicant's inability to manage the behavioral problems that the applicant's eldest son has experienced as a result of the absence of his father. The record indicates that the applicant's teenage son was arrested for shoplifting a knife that he intended to use to harm himself, and that he is suffering from depression and anxiety disorder. The record also indicates that the applicant's youngest son is suffering from behavior problems as a result of his father's absence. concludes that as a result of the separation from her husband, the applicant's spouse has suffered from suicidal ideations and requires ongoing therapy and support.

In addition to the emotional hardship summarized above, the record indicates that the applicant's spouse is suffering from financial hardship due to the applicant's absence. The applicant was the

only income-earner for the family prior to his departure. Although the record indicates that the applicant's spouse has tried to run one of the applicant's businesses in his absence, her mental health and other limitations have prevented her from successfully doing so. The record contains evidence that the applicant's spouse is in financial distress and, at the time of the appeal, owed the U.S. Department of Treasury \$30,000, in addition to other debts documented in the record. The debt against the applicant's spouse resulted in a lien against her and her property. Letters from individuals close to the applicant's spouse indicate that she is under a great deal of emotional stress due to the pressures of this debt. A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. lawful permanent resident spouse is suffering extreme hardship due to her separation from the applicant.

In regards to the hardship that the applicant's spouse would suffer if she were to relocate to Israel, the record indicates that this hardship, when considered in the aggregate, is also beyond the hardship typically experienced under these circumstances and rises to the level of extreme hardship. The record illustrates that the applicant's spouse suffers from PTSD and is clinically fearful of returning to Israel due to her experiences there as a youth. [REDACTED] in her evaluation, explains that the applicant's spouse, although she is native of Israel, is so fearful of returning there that she has not visited her husband since his voluntary departure in October 2010. In fact, the record indicates that the applicant's spouse has not visited that country in over twenty years due to her fear. The applicant's spouse is raising three school-age U.S. citizen children in the United States and does not want to take them to Israel due to her fear of the violence there despite the emotional problems that they are suffering due to separation from their father. As previously mentioned, the AAO notes the March 12, 2012 U.S. Department of State Travel Warning for Israel, the West Bank, and the Gaza Strip. Although hardship to the applicant's children is not directly relevant, the record indicates that the applicant's spouse would suffer substantial emotional trauma if she would have to either be separated from her children or if she would have to relocate them to a country where she fears for their safety. Moreover, the record indicates that the applicant's spouse would face difficulty in repaying the significant debt that she owes in the United States were she to relocate to Israel. In this case, when the relevant factors are considered in the aggregate, the AAO concludes that the hardship faced by the applicant's spouse should she relocate to Israel would be extreme.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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)...

Id. at 301. The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship the applicant's U.S. lawful permanent resident spouse would face if the applicant were to continue to reside in Israel, the applicant's important role in the lives of his three U.S. citizen children, the many favorable character recommendations that the applicant received from clients and community members in the United States, and the applicant's remorse for his previous immigration violations. The unfavorable factors in this matter are the applicant's initial fraudulent entry into the United States, his conviction for assault, his initial failure to disclose his prior immigration and criminal violations, and his unlawful presence in the United States.

The immigration violations committed by the applicant and his criminal conviction are very serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

In proceedings for an application for waiver of grounds of inadmissibility under section INA § 212(a)(9)(B)(v), the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.