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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
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Washington, D.C. 20536

identifying data deleted to
protect clearly unwarranted
personal privacy



APR 21 2003

FILE:

Office: Athens

Date:

IN RE: Applicant:

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

ON BEHALF OF APPLICANT:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer in Charge, Athens, Greece, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is before the AAO on a motion to reopen. The motion will be dismissed and the order dismissing the appeal will be affirmed.

The applicant is a native and citizen of Jordan who was found to be inadmissible to the United States by a consular officer under sections 212(a)(2)(A)(i)(I) and 212(a)(2)(B), of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I) and § 1182(a)(2)(B), for having been convicted of a crime involving moral turpitude and for having been convicted of multiple crimes.

The applicant married a native of Jordan and naturalized U.S. citizen in Ramallah, West Bank on January 14, 1999, and he is the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. § 1182(h) .

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the application accordingly. The AAO affirmed that decision on appeal.

On motion, counsel states that the applicant provided information regarding the great danger to his life and the unbearable and extreme conditions he and his wife are living under. Counsel asserts that the applicant is not claiming hardship based on financial or economic detriment. Counsel asserts that the applicant is living in a war zone and their lives are under threat.

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

(A)(i) Except as provided in clause (ii), any 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,...is inadmissible.

(B) Any alien convicted of 2 or more offenses (other than purely political offenses), regardless of whether the conviction was in a single trial or whether the

offenses arose from a single scheme of misconduct and regardless of whether the offenses involved moral turpitude, for which the aggregate sentences to confinement were 5 years or more is inadmissible.

Section 212(h) of the Act provides, in part, that:-The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I),...or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if-

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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 Secretary 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;...and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status....

The record reflects that the applicant was convicted on June 27, 1991, of violating Security Order No. 69 of the Israeli law, for offenses regarding military equipment, and causing harm with aggravated intent. That decision was affirmed by the Supreme Court. The applicant was sentenced to 5 years imprisonment of

which he served 14 months. The crime included premeditated injury and collaboration to cause injury and offenses related to military equipment and were committed when he was 17 years old.

Here, fewer than 15 years have elapsed since the applicant committed the last violation. Therefore, the applicant is ineligible for the waiver provided by section 212(h)(1)(A) of the Act.

Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have committed crimes involving moral turpitude. In addition to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009, this intent was recently seen in the provisions of the Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. No. 104-132, 110 Stat. 1214, which relates to criminal aliens. Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. See *Fiallo v. Bell*, 430 U.S. 787 (1977); *Reno v. Flores*, 507 U.S. 292 (1993); *Kleindienst v. Mandel*, 408

U.S. 753, 766 (1972). See also *Matter of Yeung*, 21 I&N Dec. 610, 612 (BIA 1997).

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. Hardship to the applicant is not a consideration.

The applicant's wife is a citizen of the United States. On May 1, 2001, the applicant was interviewed by a consular officer. At that time he indicated that his wife's entire family lives in the United States, and she cannot travel back and forth all of the time.

There are no laws that require a United States citizen to leave the United States and live abroad. See *Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). The uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather

represents the type of inconvenience and hardship experienced by the families of most aliens being deported or separated.

The Board in *Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), also referred to *Silverman v. Rogers*, 437 F.2d 102 (1st Cir. 1970), cert. denied 402 U.S. 983 (1971), where the court stated that, "even assuming that the Federal Government had no right either to prevent a marriage or destroy it, we believe that here it has done nothing more than to say that the residence of one of the marriage partners may not be in the United States."

The applicant's wife and child have the choice to remain in the United States and out of harm's way. Hardship to the applicant is not a consideration in this matter.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship to a qualifying relative that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to remain in the United States. It is concluded that the applicant has not established the qualifying degree of hardship in this matter.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General and pursuant to such terms, conditions, and procedures as he may by regulations prescribe. Since the applicant has failed to establish the existence of extreme hardship, no purpose would be served in discussing a favorable exercise of discretion at this time.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval 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 order dismissing the appeal will be affirmed.

ORDER: The motion is dismissed. The order of August 15, 2002, dismissing the appeal is affirmed.