

PUBLIC COPY



U.S. Citizenship
and Immigration
Services

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

A2

DEC 21 2004

[REDACTED]

FILE:

[REDACTED]

Office: LOS ANGELES DISTRICT OFFICE

Date:

IN RE:

[REDACTED]

APPLICATION:

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

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.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Syria. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The record reflects that the applicant is the spouse of a U.S. citizen and father of two U.S. citizen children. He seeks a waiver of inadmissibility to remain in the United States with his family and adjust his status to that of a lawful permanent resident.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse and denied the application accordingly.

On appeal, counsel contends that the applicant established extreme hardship to his U.S. citizen spouse, and has submitted additional evidence in support of the appeal. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's fraudulent presentation of a Lebanese passport in order to procure admission to the United States in 1989. *Decision of the District Director* (June 4, 2004) at 2. Counsel asserts that the applicant did not present the Lebanese passport for admission, but merely surrendered it to immigration officials when he was detained for standing in the line for U.S. citizens, where counsel claims he was standing due to his limited ability to speak or read English. *Brief in Support of Appeal* (June 30, 2004). Counsel asserts that the applicant used the Lebanese passport to flee Syria, but did not present it to U.S. authorities for admission.

Records of the former Immigration and Naturalization Service (INS) establish that the applicant did present the fraudulent passport to a U.S. immigration inspector. *Order to Appear for Deferred Inspection* (Form I-546) (December 10, 1989) ("Applicant applied for admission into the U.S. as a visitor. Subject presented Lebanese passport . . . to the inspecting officer. Examination of passport uncovered visa alterations . . . and restitching of passport . . . and photo-sub.") The record also contains completed forms *Arrival/Departure Record* (Form I-94) and *Customs Declaration* (Customs Form 6059B), filled out with the hand-written alias name from the passport he was carrying. The applicant was detained upon admission, charged with fraud, and placed into exclusion proceedings contemporaneously with the applicant's acts. *See Notice to Applicant for Admission Detained for Hearing Before Immigration Judge* (Form I-122) (December 10, 1989). Furthermore, the applicant conceded his excludability for fraud when he filed a motion to change venue of immigration judge proceedings. *Motion for Change of Venue* (undated) ("I admit all charges contained in the Notice of Exclusion, (Form I-122), under § 212(a)(19) [former INA designation of section governing inadmissibility for fraud] & [sic] § 212(a)(20)").

The burden of proving admissibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. While the applicant contends that he never presented the fraudulent documents to U.S. officials for entry into the United States, the record contains ample evidence that the applicant did in fact make a material misrepresentation by presenting fraudulent documents to U.S. officials in order to procure admission to the United States. This case is therefore distinguished from cases in which aliens used fraudulent documents only *en route* and did not present them to U.S. officials for admission, but, rather, immediately requested asylum. *See, e.g., Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991). In the applicant's case, it appears he only revealed his true identity after having unsuccessfully attempted to procure admission by fraud. The district director's determination of inadmissibility is therefore affirmed. The question remains whether he qualifies for a waiver.

Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, 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 the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

8 U.S.C. § 1182(i)(1). A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the alien himself is not a permissible consideration under the statute. The qualifying relative in the instant case is the applicant's wife.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, 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 566. The BIA has held:

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). In addition, the Ninth Circuit Court of Appeals has held, “the most important single hardship factor may be the separation of the alien from family

living in the United States,” and, “[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.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case. 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).

The AAO notes that the record contains references and documentation addressed to the hardship that the applicant’s children would suffer if the applicant were refused admission. Section 212(i) of the Act provides that a waiver of inadmissibility under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship as to his or her U.S. citizen or lawful permanent resident spouse or parent. Hardship to an applicant’s child will therefore be taken into account only as it contributes to the determination of hardship for the only qualifying relative under the statute for whose benefit the waiver can be granted, the applicant’s U.S. spouse.

The applicant’s wife [REDACTED] was born in Lebanon, from which she fled in 1986. She immigrated to the United States in 1992 and has been a naturalized citizen since 2001. Her elderly mother (age 76) and father (age 83) are naturalized U.S. citizens who live in the same city as the applicant and his wife. Ms. [REDACTED] states that her father is in ill health and her mother is “forgetful.” *Affidavit of Seta Boghossian in Support of Appeal* (August 7, 2003). [REDACTED] has three brothers also live in California. Two are U.S. citizens and one is a lawful permanent resident. [REDACTED] married the applicant in 1995 and filed a relative petition on his behalf, which was approved later that year. The applicant and his spouse have two U.S. citizen children who live with them, aged 7 and 8. The applicant’s parents are deceased. The applicant’s brother is a U.S. citizen who also lives in the same city with the applicant and his wife, Pasadena. The applicant’s sister is a lawful permanent resident, and also lives in Pasadena.

[REDACTED] has been the “sole caretaker” for her elderly mother for last 10 years. *Supplemental Affidavit of [REDACTED]* (June 30, 2004) (Applicant’s Exh. 10). Her three brothers, also living in the United States cannot assist her because they work full-time and do not have the financial resources to pay for in-home care. *Id.* In addition, [REDACTED] states that Armenian tradition dictates that daughters rather than sons care for aging parents. *Id.*, at 2. The applicant assists her with the in-home care, particularly when she is debilitated by bouts with depression, discussed further below. The applicant reports that he spends “about four hours with them [daily]. I have to cook, clean, do their laundry, and dress them. When [they] have a doctor’s appointment, I drive them and wait for them.” *Affidavit of Zohrab Boghossian* (June 30, 2004) (Applicant’s Exh. 14), at 2.

The couple’s younger son has been diagnosed as mentally retarded, although otherwise physically healthy. The local school district found, “Hovannes qualifies for special education services due to significantly below average intellectual functioning existing concurrently with defects in adaptive behavior and manifested during the development period, which adversely affects his educational performance.” *Pasadena Unified School*

District, Individualized Education Program (March 12, 2004) (Applicant's Exh. 13). The report further provides, "Hovannes needs individualized instruction that is not available in regular general education class." *Id.* The school's evaluation is based on "observation, student work samples . . . [and] testing by psychologists." *Id.* [REDACTED] emphasizes that the applicant was critical in obtaining the appropriate educational accommodations from the local school district.

Documentation on the record shows that [REDACTED] has been diagnosed as temporarily disabled by "severe depression." *Medical Provider Evaluation* (May 14, 2004). She takes various medications for her depression and is under psychiatric care. *Id.*; Applicant's Exh. 11; *Supplemental Affidavit of Seta Boghossian, supra*. She withdrew from school, stopped working, and stopped driving on freeways due to the level of depression, anxiety, and stress. *Psychological Evaluation* (June 20, 2004), at 5, 6; *Supplemental Affidavit of [REDACTED] supra*. She suffered two miscarriages following the births of her two children. *Psychological Evaluation* (June 20, 2004).

It is unclear on the record to which country the applicant would relocate if he were refused admission, and to which country his family might accompany him. The applicant was born in Syria and raised in Lebanon. Country conditions and related claims of hardship on the record pertain primarily to Lebanon. These documents indicate that Americans are at increased risk from terrorist attacks and that danger from unexploded landmines remains. *Lebanon-U.S. Department of State Travel Warning* (May 20, 2004). Ms. [REDACTED] asserts that she and her family fled Lebanon due to fear of persecution on account of her religion, Armenian Orthodox Christianity, and that none of her or the applicant's family members remain in Lebanon. *Affidavit of [REDACTED] supra*. The applicant has an asylum application pending before the Executive Office for Immigration Review, in which he claims fear of returning to Lebanon and Syria. *Request for Asylum in the United States* (February 9, 1990). Counsel asserts that country conditions in Lebanon are economically disadvantaged and dangerous in general, and particularly for Armenian Christians. Counsel also asserts that the applicant's family would potentially face religious discrimination, forced conscription of their sons into the military, and the unavailability of special education for their younger child and psychiatric treatment for [REDACTED]. The Department of State's *Consular Information Sheet* indicates, "Due to the presence of Syrian troops in Lebanon, Syrian-American men over the age of 18 who are planning to visit Lebanon are strongly encouraged to check with the Syrian Embassy in Washington, D.C. concerning compulsory military service. Even American males who have never resided in or visited Syria, but whose fathers are/were Syrian, are required to complete military service or pay to be exempted." *Consular Information Sheet* (February 18, 2004) (Applicant's Exh. 15). Counsel also includes a Public Announcement from the Department of State concerning the Middle East and North Africa in general, "remind[ing] U.S. citizens of the continuing threat of anti-American violence and terrorist attacks against U.S. citizens and interests." *Public Announcement* (April 29, 2004). Finally, counsel includes a Department of State *Worldwide Caution*, which states, in part, "The Department of State is deeply concerned about the heightened threat of terrorist attacks against U.S. citizens and interests abroad. . . . Terrorists do not distinguish between official and civilian targets. These may include facilities where U.S. citizens and other foreigners congregate or visit, including residential areas, clubs, restaurants, places of worship, schools, hotels and public areas." *Worldwide Caution* (April 29, 2004). The first language for all family members is Armenian, all family members speak English, and Ms. Boghossian also speaks Greek. *Psychological Evaluation* (June 20, 2004).

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, supports a finding that refusal of admission to the applicant would result in extreme hardship to [REDACTED]. If she relocates with the applicant to Lebanon, she will face the difficult choice of whether to bring her sons, disrupting the special educational program established for her younger son, subjecting them to increased risk of terrorism and the risk of forced conscription into the military, or leaving them in the United States and separating the children from their parents, losing their companionship during the children's formative years. If she remains in the United States without the applicant, she would be left alone to raise two sons, one of whom faces a lifetime of challenges due to significantly impaired intellectual and social functioning. She would also be unable to rely on the particular form of support her spouse can give by assisting her with the care of her parents and her children when she is overcome by her symptoms of depression, which may lead to worsening of her depression. Visiting the applicant in Lebanon or Syria to mitigate the effects of separation would be risky, for the reasons stated above. Particularly in view of 9th circuit law emphasizing the weight of hardship that would result from family separation, separation from her husband under these particular circumstances, if she were to remain in the United States, or separation from her children and other immediate and extended family members, if she were to return to Lebanon, would constitute an extreme hardship, above and beyond that which is commonly experienced in most cases of separation. Accordingly, the totality of the circumstances in this case warrants a finding of extreme hardship to the applicant's spouse.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that the positive factors are not outweighed by adverse factors. See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factor in the present case is the applicant's attempt to enter the United States by fraud. The favorable and mitigating factors in the present case are the extreme hardship to the applicant's spouse if he were refused admission, his immediate and extended family ties in the United States, including his U.S. citizen children, particularly his son who suffers from mental retardation, and his otherwise clean background.

The AAO finds that, although the immigration violation committed by the applicant was serious and cannot be condoned, when 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.