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FILE: [Redacted] Office: PHOENIX, AZ Date: SEP 04 2008

IN RE: [Redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Lebanon who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation on December 20, 1989. The applicant is married to a U.S. citizen and has five U.S. citizen children. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to show that her spouse would suffer extreme hardship as a result of her removal from the United States. The application was denied accordingly. *Decision of the District Director*, dated March 27, 2006.

On appeal, the applicant's spouse states that he and his children would suffer extreme hardship as a result of the applicant's inadmissibility because she is the primary caregiver for their children. The applicant's spouse also asserts that he would be persecuted if he relocated to Lebanon. *Spouse's Letter*, dated April 21, 2006.

The AAO notes that the applicant's spouse indicates on the Notice of Appeal, Form I-290B that he will be sending a brief and/or evidence to the AAO within thirty days. The AAO notes that no brief or further evidence has been submitted, thus the current record is considered the complete record for the purposes of this review.

The record indicates that on December 20, 1989, the applicant presented a photo-altered Italian passport in the name of [REDACTED] to gain entry into the United States. Accordingly, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (i) 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.

Section 212(i) of the Act provides that:

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

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on the applicant's U.S.

citizen or lawful permanent resident spouse and/or parent. Hardship the alien or her children experience due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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 applicant 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.

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). 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 extreme hardship to the applicant's spouse must be established in the event that he resides in Lebanon and in the event that he resides in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

In documenting hardship to her spouse, the applicant submitted a statement and a statement from her spouse. The applicant's spouse states that it would be an extreme hardship for him if the applicant were found to be inadmissible because his job requires him to travel. *Spouse's Statement*, dated April 21, 2006. He states that he works as a light bulb and ballast installer for AAA Lighting Company and he works out of four states: Arizona, Nevada, Utah and New Mexico. He states that he is away from home for a minimum of one week at a time, with an average of being away from home for one month at a time. He states that if his wife were not in the United States to care for their children he would not be able to leave them alone for a month at a time. He also states that he has no other family that could help him with caring for his children because his only relatives live in Chicago. The applicant's spouse states that to raise his five children without the applicant would be the greatest hardship for him as his oldest son is fourteen years old and his youngest daughter is only four months old. The applicant's spouse also explains how he and the applicant are "Assyrians" and as Assyrians they were treated as second-class citizens in Lebanon. He states that the applicant's brother was accused of being a member of the "Katayeb" party in Lebanon and was arrested and transported to Syria for detention. At that time the applicant and her father fled to Germany. He states that to leave the United States after all these years would mean that Lebanon would now be a foreign country to him. He states further that if

he returns to Lebanon he will be persecuted for three reasons: being Assyrian, being involved in the Katayeb party and being born to Syrian parents. He also states that as a Christian without a citizenship certificate he would not be able to find employment in Lebanon. *Id.* The applicant states that her spouse and family will endure severe hardship if she is found to be inadmissible. *Applicant's Statement*, dated January 18, 2006. She states that her spouse and children will be left without a mother and wife to care for them and look after their needs, leaving her family destroyed. *Id.*

The AAO notes that the current Department of State Travel Warning for Lebanon states that U.S. citizens should avoid all travel to Lebanon and that the threat of anti-Western terrorist activity exists in Lebanon. *Department of State Travel Warning for Lebanon*, dated May 30, 2008. Because of the current country conditions, the AAO finds that it would be an extreme hardship for the applicant's spouse to relocate to Lebanon. In addition, the AAO also finds that it would be an extreme hardship for the applicant's spouse to remain in the United States without the applicant. The applicant and her spouse have five small children together and, if the applicant were to be removed from the United States, her spouse would have sole responsibility for their children and no one to care for them when he traveled for work. According to the 2008 Poverty Guidelines, the applicant's family is already living near the poverty line for a family of six. Obtaining childcare services would, therefore, pose an extreme financial hardship for the applicant's spouse if the applicant, their children's caretaker, were to be removed from the United States. Accordingly, the AAO finds that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility to the United States.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant's fraudulent entry into the United States in 1989 and her residence in the United States with no legal immigration status.

The favorable factors in the present case are the applicant's extensive family ties to the United States, including five U.S. citizen children; extreme hardship to her U.S. citizen spouse if she were to be denied a waiver of inadmissibility; the applicant's lack of a criminal record or offense; and, as indicated by an affidavit from her husband, her attributes as a good mother and wife.

The AAO finds that the misrepresentation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, the AAO finds that 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.