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



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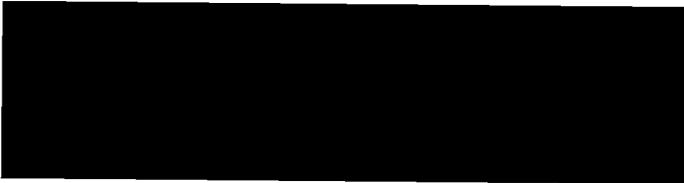
Office: PORTLAND, OREGON

Date:

IN RE:

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:



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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Portland, Oregon, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

The applicant is a native and citizen of Iran. The record indicates that on January 16, 1993, the applicant arrived at the Portland International Airport as a passenger under the Transit Without Visa (TWOV) program en route to Canada. The applicant presented a photo-substituted Greek passport. It was determined that the applicant was inadmissible 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 attempted to procure entry into the United States by fraud or willful misrepresentation.¹ The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Field Office Director*, dated August 23, 2007.

¹ Counsel, on appeal, asserts that the applicant did not commit fraud or willful misrepresentation because the applicant "immediately upon arrival in the United States...gave his true identity...." *Brief in Support of Appeal*, dated September 21, 2007.

In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. *See Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Nothing in the record establishes that the applicant gave his true identity immediately upon arrival. The Form I-94T, Arrival Record, completed by the applicant, detailed the name on the photo-substituted Greek passport, not his true identity. In addition, the Form I-213, Record of Deportable Alien, states that the applicant "entered the United States on January 16, 1993, as an alien in transit using a forged and altered Greek passport...." *Form I-213, Record of Deportable Alien*, dated October 4, 2005. Moreover, the memo prepared by the legacy INS Inspections Unit/PDX, Portland, Oregon, confirms that after the primary inspectors began to process the TWOVs it was becoming apparent that the individuals who were presenting Greek passports were not in fact Greek citizens..... Although the first several males claimed to be Greek it was not long after that the males began to admit that they were in fact Iranian nationals. It was at this point that they became very cooperative and readily admitted that they were not Greeks...." *Apprehension of 45 Iranian TWOVs Using Photo-Altered and Data Altered Greek Passports*, dated January 17, 1993. Thus, despite counsel's unsupported assertions to the contrary, it has been established that the applicant willfully misrepresented himself by presenting a fraudulent document when he attempted entry to the United States in January 1993. Nothing in the record corroborates counsel's assertion that the applicant provided his true identity at first opportunity. He is thus subject to section 212(a)(6)(C)(i) of the Act.

On appeal, counsel for the applicant submits a brief, dated September 21, 2007, and referenced exhibits. The entire record was reviewed and considered in rendering this decision.

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

- (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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (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.

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. 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 held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

The applicant must first establish that his U.S. citizen spouse would suffer extreme hardship were she to remain in the United States while the applicant resides abroad due to his inadmissibility. With respect to this criteria, the applicant's spouse contends that she will suffer emotional and financial hardship. In a declaration she states that she is unable to imagine her life without her spouse. She notes that she and the applicant have worked hard to establish their lives together and buy a home and were he unable to reside in the United States, she would not be able to keep the home and pay all of the bills on her own. *Affidavit of* [REDACTED] dated May 3, 2006.

To support the applicant's spouse's assertions with respect to the hardships she will experience if her spouse is unable to remain in the United States, medical documentation and a letter from [REDACTED], the applicant's spouse's treating physician, have been provided. [REDACTED] notes that the applicant's spouse is suffering from Hypertension and is under stress with depression and anxiety. [REDACTED] further confirms that the applicant's spouse is taking medications for said conditions and needs the emotional support of her husband for her well-being. *Letter from* [REDACTED], *Beaverton Medical Office*, dated September 14, 2007. In addition, financial documentation has been provided establishing the applicant's financial contributions to the household through his gainful employment with [REDACTED]. *See W-2, Wage and Tax Statement for 2006*. Finally, the AAO notes that a Travel Warning has been issued by the U.S. Department of State, urging U.S. citizens and lawful permanent residents to avoid travel to Iran. *Travel Warning-Iran, U.S. Department of State*, dated March 23, 2010. As such, the applicant's spouse would be at significant risk if she chose to travel to Iran regularly to visit her spouse due to his inadmissibility, further exacerbating the emotional hardship to the applicant's spouse.

The record reflects that the cumulative effect of the emotional and financial hardship the applicant's spouse would experience due to the applicant's inadmissibility rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, the applicant's spouse would suffer extreme hardship.

Extreme hardship to a qualifying relative must also be established in the event that he or she accompanies the applicant abroad based on the denial of the applicant's waiver request. With respect to this criteria, counsel notes and documents that the applicant's spouse, a native of the Philippines, obtained lawful permanent resident status in 1978 and has lived in the United States for more than thirty years. She has two children and a granddaughter who are all U.S. citizens. She has been gainfully employed, since August 1995, with Xerox Corporation. The applicant's spouse's family, home, gainful employment and life are all in the United States. Counsel further contends that the applicant's spouse is Catholic; she has never been to Iran, does not speak Farsi, is completely unfamiliar with the customs and culture of Iran, and is afraid that life for an American Catholic woman in an Islamic, fundamentalist country would be unbearable. *I-601 Summary of Hardship*.

Documentation has been provided establishing the problematic country conditions in Iran, including human rights violations and restrictions on religious freedom. As previously noted, a Travel

Warning has been issued by the U.S. Department of State for U.S. citizens and lawful permanent residents, due to ongoing security concerns in Iran. As noted, in pertinent part:

The Department of State warns U.S. citizens to carefully consider the risks of travel to Iran.

Some elements in Iran remain hostile to the United States. As a result, American citizens may be subject to harassment or arrest while traveling or residing in Iran.

The Iranian government continues to repress some minority religious and ethnic groups, including Bahai, Arabs, Kurds, Azeris, and others.

Large-scale demonstrations with sometimes violent outbreaks have taken place in various regions throughout Iran, in particular as a result of a volatile political climate following the June 2009 presidential elections. U.S. citizens who travel to Iran should exercise caution.

The U.S. government does not have diplomatic or consular relations with the Islamic Republic of Iran and therefore cannot provide protection or routine consular services to U.S. citizens in Iran.

Supra at 1.

In addition, the AAO notes the following human rights abuses in Iran:

The government's poor human rights record degenerated during the year, particularly after the disputed June presidential elections. The government severely limited citizens' right to peacefully change their government through free and fair elections. The government executed numerous persons for criminal convictions as juveniles and after unfair trials. Security forces were implicated in custodial deaths and the killings of election protesters and committed other acts of politically motivated violence, including torture, beatings, and rape. The government administered severe officially sanctioned punishments, including death by stoning, amputation, and flogging. Vigilante groups with ties to the government committed acts of violence. Prison conditions remained poor. Security forces arbitrarily arrested and detained individuals, often holding them incommunicado. Authorities held political prisoners and intensified a crackdown against women's rights reformers, ethnic minority rights activists, student activists, and religious minorities. There was a lack of judicial independence and of fair public trials. The government severely

restricted the right to privacy and civil liberties, including freedoms of speech and the press, assembly, association, and movement; it placed severe restrictions on freedom of religion. Official corruption and a lack of government transparency persisted. Violence and legal and societal discrimination against women, ethnic and religious minorities, and lesbian, gay, bisexual, and transgender (LGBT) persons; trafficking in persons; and incitement to anti-Semitism remained problems. The government severely restricted workers' rights, including the right to organize and bargain collectively, and arrested numerous union organizers. Child labor remained a serious problem. On November 20, for the seventh consecutive year, the UN General Assembly (UNGA) adopted a resolution on Iran expressing concern about the country's "serious, ongoing, and recurring human rights violations."

2009 Human Rights Report-Iran, U.S. Department of State, dated March 11, 2010.

The record reflects that the applicant's U.S. citizen spouse would be forced to relocate to a country to which she is not familiar. She would have to leave her support network, including her children, grandchildren, her friends and her long-term gainful employment, and she would be concerned about her safety at all times in Iran, due to the problematic country conditions in Iran, specifically, violence and discrimination against women and religious minorities. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Moreover, it has been established that the applicant's U.S. citizen spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien 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 . . . 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 favorable factors in this matter are the extreme hardships the applicant’s U.S. citizen spouse, children and grand-child would face if the applicant were to reside in Iran, regardless of whether they accompanied the applicant or remained in the United States, community ties, the applicant’s apparent lack of any criminal convictions, support letters, property ownership, payment of taxes, and the passage of more than seventeen years since the applicant’s fraud or willful misrepresentation. The unfavorable factors in this matter are the applicant’s fraud or willful misrepresentation when attempting entry to the United States.

The immigration violations committed by the applicant are 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 application for waiver of grounds of inadmissibility under section 212(i) 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. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved. The district director shall continue processing the applicant’s Form I-485 application accordingly.