

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy  
**PUBLIC COPY**

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



U.S. Citizenship  
and Immigration  
Services

115

[REDACTED]

FILE: [REDACTED] Office: LOS ANGELES, CA

Date: **AUG 05 2010**

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.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Los Angeles, California. 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 Armenia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States using a fraudulent passport and fraudulent Resident Alien Card. The applicant is married to a naturalized U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and children in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the District Director*, dated January 31, 2006.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, indicating they were married on September 17, 2004; a copy of naturalization certificate; copies of the birth certificates of the couple's two U.S. citizen children; an affidavit from an affidavit from the applicant; a letter from mother and a copy of her naturalization certificate; numerous letters of support; copies of tax documents; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Armenia; a letter from employer; photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this 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.

Section 212(i) provides:

(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 . . . .

In this case, the record shows, and the applicant concedes, that she attempted to enter the United States using a fraudulent passport and Resident Alien Card under the name "[REDACTED]"; *Record of Sworn Statement in Proceedings Under Section 235(b)(1) of the Act*, dated December 28, 2001; see also *Appeal to the Administrative Appeals Office* at 8, dated April 1, 2006 ("although Ms. [REDACTED] indeed entered the country by way of misrepresentation, she has expressed sincere remorse for her actions"); *Affidavit of Anna Hovhanisyan*, dated March 23, 2006 (stating she will never do anything to circumvent U.S. immigration laws again). Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.

A section 212(i) waiver is 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. An applicant must establish extreme hardship to his or her qualifying relative should the qualifying relative choose to join the applicant abroad, as well as should the qualifying relative choose to remain in the United States and be separated from the applicant. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. See *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996) (considering hardship upon both separation and relocation). 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-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 (BIA) 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: 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).

This matter arises in the Los Angeles district office, which is within the jurisdiction of the Ninth Circuit Court of Appeals. That court has stated that “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 *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (“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); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted). Separation of family will therefore be given the appropriate weight under Ninth Circuit law in the assessment of hardship factors in the present case.

In this case, the applicant’s husband, [REDACTED] states that if his wife’s waiver application were denied, he would suffer emotionally and financially. [REDACTED] states that his wife is his better half and he loves her more with each day. He states that his wife gave birth to twins in February 2006, a couple of weeks early. In addition, [REDACTED] states that he is working two jobs to provide for his family and that he recently passed the civil service exam for a position with the U.S. Postal Service. He contends that being separated from his wife “is not an option, neither for [him] or for [their] children” because they are a close, tight-knit family. According to [REDACTED], being separated from each other would be a nightmare that he is not willing to consider. He contends he has big aspirations for his twins and that if they had to move to Armenia, the twins would be deprived of the educational opportunities present in the United States and would be unable to receive the level of medical care they require at this early stage in their lives. [REDACTED] states that because the twins were born prematurely, they need to be continually monitored and claims that medical care in Armenia is far inferior to that in the United States, which may seriously jeopardize their health. In addition, Mr. [REDACTED] claims that if he moved to Armenia, he would lose the career opportunities he has available to him in the United States, would be unable to find comparable employment in Armenia, and would be separated from his extended family in the United States, including his mother. [REDACTED] states that his father died a few years ago and that his mother lives with him. He states that his mother takes care of the twins and that he takes her to doctor’s visits and other appointments. He contends that if his wife’s waiver application were denied, his mother would be left alone as he is her only child and that considering his father passed away a few years ago, it would be especially traumatic for his mother if he moved to Armenia to be with his wife. *Affidavit of Petros Atabekian*, dated February 27, 2006.

A letter from [REDACTED] mother states that her husband passed away about four years ago and she got ill. She states that her son was very lonely until he met the applicant. [REDACTED] mother states that ever since her son met the applicant, they have been very happy together. She contends her son “can’t live a day without [REDACTED] being in his life, and neither can she.” *Letter from [REDACTED]* [REDACTED] dated February 12, 2006. Counsel contends, and a review of United States Citizenship and Immigration Services (USCIS) records confirms, that [REDACTED] mother is an asylee from Armenia and that [REDACTED] is a derivative asylee from Armenia. Counsel asserts that as a

derivative asylee, the applicant's spouse "would likely face imminent danger or death were he to return to the country that his parents fled to come to the U.S."

After a careful review of the record, the AAO finds that the applicant has established her husband has suffered, and will continue to suffer, extreme hardship if her waiver application is denied.

The AAO finds that if [REDACTED] had to move to Armenia to be with his wife, he would experience extreme hardship. The record shows that [REDACTED] is a derivative asylee from Armenia. He has lived in the United States for over fifteen years, including his entire adult life. In addition, the record shows that [REDACTED] mother is also an asylee from Armenia, lives with the applicant, and that he is her only child. Furthermore, the AAO notes that the U.S. Department of State states that medical facilities in Armenia are limited and warns that "U.S. citizens are urged to exercise caution and to avoid traveling alone after dark in Yerevan," where the applicant is from. *U.S. Department of State, Country Specific Information, Armenia*, dated May 19, 2010. Considering these unique factors, the AAO finds that requiring [REDACTED] to join the applicant in Armenia, the country where his family fled for fear of persecution, and consequently, leaving his mother by herself, would result in extreme hardship.

For the same reasons, and giving appropriate weight to the separation of family members under Ninth Circuit law as noted above, the AAO finds that [REDACTED] would also experience extreme hardship were he to remain in the United States without the applicant. Denying the applicant's waiver application under section 212(i) of the Act presents a permanent bar to her admissibility into the United States. This permanent bar, combined with the fact that [REDACTED] should not be required to visit his wife in the country his family fled from persecution, would cause extreme emotional harm that is beyond the common results of removal or inadmissibility. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that [REDACTED] faces extreme hardship if the applicant is refused admission.

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 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 willful misrepresentation of a material fact in order to procure an immigration benefit. The favorable and mitigating factors in the present case include: the extreme hardship to the applicant's husband if she were refused admission; family ties in the United States including her U.S. citizen husband and two U.S. citizen children; the passage of over eight years since her immigration violation; and the fact that the applicant has not had any criminal convictions in the United States.

The AAO finds that, although the applicant's immigration violation is 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.