

Case 4: El Al at LAX

John Mueller

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Less than a year after 9/11, on the fourth of July (his birthday) a 52-year-old legal immigrant from Egypt who had grievances about the treatment of Palestinians by Israel, walked into the Los Angeles airport, reached the El Al counter, and fired with two pistols, killing two. He was then gunned down and killed by an El Al security guard.

The attack occurred at a time when, as Jane Meyer puts it, that “the only certainty shared by virtually the entire American intelligence community was that a second wave of even more devastating terrorist attacks on America was imminent.”¹ The Los Angeles attack scarcely fit that frame, and it was initially labeled a hate crime rather than terrorism. Supporting this judgment was the fact, that there was, as Zachary Zaerr notes, “no network to trace, no manifesto to discover, no understandable method to the madness.” The man generally seemed well-adjusted and did not appear to be terribly ideological or religious. He was having difficulties in his business, and may have been emotionally depressed. Months later, both the FBI and the Department of Justice decided, however, that the attack did indeed “fit the definition of terrorism” particularly because the shooter bypassed so many other ticket counters to target El Al.

¹ Jane Mayer, *The Dark Side* (New York: Doubleday, 2008), p. 3

Case 4: El Al at LAX

Zachary Zaerr

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1. Overview

Shortly after 11:00am on July 4, 2002, 52 year old Egyptian immigrant Hesham Mohamed Hadayet parked his Mercedes in an airport parking lot near Los Angeles International Airport.¹ By approximately 11:30am he had made his way to the El Al ticket counter.² Moments later he opened fire on those near the ticket area with a .45 caliber Glock handgun.³ Less than a minute after he opened fire, Hadayet lay dying from an El Al security guard's gunshot, having killed two—25 year old El Al ticket agent Victoria Hen and 46 year old Yaakov Aminov, who had just dropped off a friend who was flying out—and injured three more.⁴ The whole ordeal lasted but a few minutes, though it took a full nine months until the FBI was able to gather the information it felt necessary to release a full report on the incident.

2. Nature of the adversary

The son of a retired Egyptian Air Force General, Hesham Mohamed Hadayet was born into a comfortable life in an upper-class Egyptian family, but chose to immigrate to the United States in 1992 with his wife and 2 year old son.⁵ His family said he had come to the United States with great excitement. Emad al Abd, Hadayet's Cairo-based cousin, said, "Since he was 13 or 14 he wanted to go to America... He used to say, 'It's a beautiful country.' He was like any young man, dreaming of a good life in the States."⁶ A few years after getting married, he left a successful banking career in Egypt to take a chance at the American dream.⁷ He seemed to embrace the essence of the American dream as soon as he arrived in the United States. His reaction to paying a large taxi cab bill was not distaste, but a desire to start a taxi company of his own. Bob Milstead, an American acquaintance of Hadayet, said, "He told me how he landed at LAX to begin his new life... He took a cab, and it was expensive, and he thought, wow! I'm going to get into this. You can make a lot of money."⁸ Mr. Milstead contradicted Hadayet's cousin's claim, saying that Hadayet had made the trip to the United States to escape trouble he faced for "some accounting thing he did... [Hadayet] said he was framed."⁹

¹ Frank Buckley, "LAX victims buried in Los Angeles," CNN.com, July 7, 2002.

² Judy Muller, "FBI: Gunman Went to LAX to Kill," abcnews.com, July 5, 2002.

³ Muller, "FBI: Gunman Went to LAX to Kill."

⁴ Rick Lyman and Nick Madigan, "Los Angeles Airport Gunman Slays 2 and Is Killed by Guard," NYTimes.com, July 05, 2002.

⁵ Robyn Dixon, Jack Leonard, and Rich Connell, "Those Who Knew LAX Killer Say Personal Agenda Died With Him," LATimes.com, July 14, 2002.

⁶ Dixon, Leonard, and Connell, "Those Who Knew LAX Killer."

⁷ Dixon, Leonard, and Connell, "Those Who Knew LAX Killer."

⁸ Dixon, Leonard, and Connell, "Those Who Knew LAX Killer."

⁹ Dixon, Leonard, and Connell, "Those Who Knew LAX Killer."

After his six month visa expired, Hadayet sought asylum under the claim that he would face persecution in Egypt for being inaccurately accused of being a radical Islamist by the Egyptian government. Around this time he worked part time for a branch of Bank of America, as well as working as a taxi driver.¹⁰ He was robbed during his first week of working as a taxi driver—at which point he was advised by a fellow cab driver to arm himself for defensive purposes. At some point between the robbery and summer 2002 Hadayet legally purchased the two handguns that he used during the LAX attack.¹¹

He applied for asylum in 1992, telling the Department of Justice and the Office of the Inspector General of the Immigration and Naturalization Service that “Egyptian authorities falsely accused and arrested him for being a member of the Islamic Group Gama'a al-Islamiyya, which is on the U.S. Department of State's Foreign Terrorist Organizations list.” The INS denied the request and placed him in removal proceedings. However, because he failed to “receive the notice of his immigration hearing date due to an incorrect mailing address,” the proceeding was terminated.¹²

Although his asylum request was denied, he was able to avoid deportation through his wife, who won a US State Department “Diversity Visa Program” lottery. This allowed her to gain permanent residency, and granted her husband a green card as well. The controversial program “makes available up to 55,000 diversity visas annually, drawn from random selection among all entries to persons who meet strict eligibility requirements from countries with low rates of immigration to the United States.”¹³ The testimony of William Yates, Department of Justice, to the House Subcommittee on Immigration, Border Security, and Claims, House Committee on the Judiciary, regarding how Hadayet had been allowed to legally stay in the United States is furnished in an Appendix below. It also includes a detailed account of Hadayet’s immigration proceedings.

The entrepreneurial spirit that led him to work as a cab driver later influenced his decision to open his own limousine service in 1997 out of his home in Irvine, California. For a period of time he even employed another driver, but at the time of his death the limousine business had been operating at a much slower pace.¹⁴ He was distressed over the lack of business he had following 9/11, which caused a decrease in business travel for a time, and his liability insurance was dropped in November 2011 when he failed to pay the monthly bills.¹⁵

Hadayet had two young boys, aged 12 and 7 at the time of his death. Neighbors knew his children well and described the boys as typical American kids who enjoyed collecting baseball paraphernalia and comic books.¹⁶ Hadayet’s wife Hala was considered the more outgoing of the two, and one neighbor family

¹⁰ Dixon, Leonard, and Connell, “Those Who Knew LAX Killer.”

¹¹ Dixon, Leonard, and Connell, “Those Who Knew LAX Killer.”

¹² Report Number I-2003-004, “The Immigration and Naturalization Service's Removal of Aliens Issued Final Orders,” Justice.gov, February 2003.

¹³ US State Department, “Diversity Visa (DV) Program,” travel.state.gov.

¹⁴ Dixon, Leonard, and Connell, “Those Who Knew LAX Killer.”

¹⁵ Dixon, Leonard, and Connell, “Those Who Knew LAX Killer.”

¹⁶ Chuck Squatriglia and Bill Wallace, “Airport gunman jolted by Sept. 11 / Authorities find no link to terror groups,” sfgate.com, July 6, 2002.

recalled her as a very polite, yet quiet, woman. Hesham Hadayet was more known for his attention to his limousine company, with neighbors commonly seeing him detailing either his limousine or one of his two Mercedes-Benz sedans.¹⁷ The family had been involved in one domestic dispute, but police declined to file charges as there were no signs of physical harm to either Hesham or Hala.¹⁸ While family and neighbors expressed disbelief that he could engage in the LAX attack, a former employee of Hadayet said that he had heard Hadayet complain that he hated all Israelis.¹⁹ Another former employee recalled previous conversations with Hadayet, mentioning that he watched Al Jazeera Network at home, and saying, “He blamed Israel for what was going on [in the Middle East]... He had nothing against Americans.... He's not hateful for the American people on the street.... He loved this country. He loved freedom of speech. He told me, 'I'd like to be a U.S. citizen. I like to pay my taxes. I want to raise my children here.’”²⁰

Hesham Hadayet came from a moderate religious family in Egypt, but his religious attitude seems to have undergone a radicalizing shift while in the United States.²¹ His wife was thought to be the most devout of the family; often proselytizing to a neighbor teen and always seen wearing a traditional head covering.²² Hadayet had a good natured conversation with an acquaintance at a Garden Grove, California mosque the evening before the LAX attack, joking that he knew it had to have been another Egyptian who accidentally turned off the lamp he was using to read the Koran.²³ So far as can be known, no indication was given to those at the mosque of any intent to do harm to others. The Los Angeles Muslim Public Affairs Council reached out to mosques in the LA area, but Hadayet was a relative unknown to the Muslim community.²⁴

3. Motivation

Hadayet was motivated by a handful of grievances and quite possibly depression. The attack occurred on his 41st birthday, July 4, 2002, while his wife and two young sons were on vacation in his native country, Egypt. He was enduring a time of serious financial difficulty with the recession and post 9/11 travel slowdown, remarking to a then-employee that it cost him \$1,800 a month just to keep his limousine running and on the streets.²⁵ The combination of having his family out of the country on his birthday and struggling financially took an obvious toll on his morale. He did call his father and wife early on his birthday to speak to them, and seemed to be in good spirits—his wife said that his voice sounded “very beautiful”—leaving no indication of worry on their part.²⁶

¹⁷ Squatriglia and Wallace, “Airport gunman jolted by Sept. 11.”

¹⁸ AP, “LA Airport Shooter Drew Little Attention,” foxnews.com, July 7, 2002.

¹⁹ AP, “INS: Airport Gunman Almost Deported,” foxnews.com, July 7, 2002.

²⁰ Dixon, Leonard, and Connell, “Those Who Knew LAX Killer.”

²¹ Greg Krikorian, “No Link to Extremists in LAX Shootings,” LATimes.com, April 12, 2003.

²² Squatriglia and Wallace, “Airport gunman jolted by Sept. 11.”

²³ Dixon, Leonard, and Connell, “Those Who Knew LAX Killer.”

²⁴ AP, “INS: Airport Gunman Almost Deported.”

²⁵ Dixon, Leonard, and Connell, “Those Who Knew LAX Killer.”

²⁶ Holguin, “LAX Gunman's Wife Blames US,” cbsnews.com, February 11, 2009.

The 9/11 terror attacks heavily impacted his attitude toward the people around him, leaving him more reserved than before and aware of what he perceived as others' disdain for Muslims. Perhaps contributing to this feeling was an small interaction he had with a neighborhood family. He offered a Jewish neighbor's daughter a good price on a limousine ride to her prom, but the father refused, saying he was uncomfortable doing business with Hadayet since he was a Jew and Hadayet was a devout Muslim.²⁷ An intense anti-Israeli view seemed to develop over his time in the United States, much more so than the casual, cultural anti-Israeli perspective on Mideast politics that a former employee thought Hadayet displayed.²⁸ Another former employee mentioned an outlandish claim that Hadayet once alleged, "Israelis tried to destroy the Egyptian nation and the Egyptian population by sending prostitutes with AIDS to Egypt."²⁹ Despite this, we have no indication that this attitude toward Israel fostered significant anti-American sentiment. The Hadayet family had an American flag hanging from their front door for several months after the 9/11 attacks.³⁰ It appears his anger was only aimed at Israel and their relations with their neighboring countries.

4. Goals

Hadayet's goals are difficult to determine. With no manifesto or accomplices, we are forced to piece together what could be his possible objectives when he attempted a very limited attack. We do know that he passed up multiple ticket counters, heading directly for the Israeli government-owned airline, El Al.³¹ If Hadayet had the objective of killing random civilians, he could have headed to any other ticket counter. Since he bypassed other counters, the US and Israel deemed his act to be an effort to sway opinion in favor of the Palestinians.³² Yuval Rotem, Israel's consul general in Los Angeles, said, "[The] gunman skipped dozens of other foreign airline counters to target El Al..."³³ The decision to target the El Al airline ticket counter shows a desire to explicitly kill Israeli nationals, or even those who were visiting the Jewish state, as El Al deals exclusively with flights to and from Israel, as they are owned and run by the Israeli government. Some of his previous statements recorded in the previous section indicate he also held the view that Israeli policy was harmful to his native Egypt. As for the goal of his attack itself, the information available points only to his desire to kill what he must have deemed representatives of Israel itself.

5. Plans for violence

On the day of the attack Hesham Hadayet put on a dark suit, armed himself with a .45 caliber Glock handgun, a 9mm Glock handgun, and a 6 inch

²⁷ AP, "Neighbor's American Flag Angered Gunman," foxnews.com, July 5, 2002.

²⁸ Dixon, Leonard, and Connell, "Those Who Knew LAX Killer."

²⁹ Tom Tugend, "Lives cut short: mourning the victims of LAX attack," jweekly.com, July 12, 2002.

³⁰ Squatriglia and Wallace, "Airport gunman jolted by Sept. 11."

³¹ Tom Tugend, "Isolated Shooting or Terror Attack? U.S., Israel Have Different Answers," jewishfederations.org, July 7, 2002.

³² CNN, "FBI, Justice: El Al attack was terrorism," CNN.com, April 12, 2003.

³³ Tugend, "Isolated Shooting or Terror Attack? U.S., Israel Have Different Answers."

hunting knife, drove his Mercedes to the parking lot of the LAX airport, walked inside, made his way to the El Al ticket counter, drew his .45 caliber handgun and began firing.³⁴ It is clear that Hadayet went to the airport with the intent to carry out a violent attack. Because of previous incidents involving terrorist attacks against El Al, the US and Israel formerly negotiated to allow Israeli armed guards in El Al terminals.³⁵ Haim Sapil, an El Al security guard, managed to shoot and kill Hadayet, despite having been both stabbed by Hadayet's six inch hunting knife and shot in the lower body by Hadayet's powerful .45 caliber Glock handgun.³⁶

6. Role of informants

There were no informants involved in this case.

7. Connections

Despite Hadayet's original claim for asylum, which was submitted on the grounds of being a falsely accused member of Gama'a al-Islamiyya, a FBI investigation found no link to any extremist groups. There appears to be no one else involved in any stage of the attack—his wife vehemently denied any possibility that he had played any part in the attack, claiming that he must be being framed due to American citizen's hatred of Muslims after the terror attacks of 9/11.³⁷ More discussion with Hadayet's wife revealed a very sorrowful response, "I came here for two months, just for the summer. It has been the worst two months of my life. If I had been with Hesham in the U.S., this might never have happened."³⁸ The attack seems, then, to have been carried out without any form of outside consultation.

8. Relation to the Muslim community

As noted earlier, Hadayet was an unknown in the Muslim community. During the funeral for one of the victims, Israeli-American Yaakov Aminov, a rabbi criticized the Muslim community for not being outspoken enough against terror attacks. It should be noted, however, that multiple LA-based Arab and Muslim groups had already stated their sorrow over this particular attack and disavowed violence in general.³⁹ If Hadayet was radicalized, this appears to have been an individual change, rather than one impacted by mosque attendance or by membership to any community group.

9. Depiction by the authorities

The FBI was extremely careful in how they responded publically to the incident--so careful, in fact, that Israeli government representatives very publically disagreed with the FBI over its failure to classify the attack as a terror

³⁴ Lyman and Madigan, "Los Angeles Airport Gunman Slays 2 and Is Killed by Guard."

³⁵ Ted Rohrlich, "U.S. Pact Allows Use of Armed El Al Guards," LATimes.com, July 6, 2002.

³⁶ Lyman and Madigan, "Los Angeles Airport Gunman Slays 2 and Is Killed by Guard."

³⁷ Holguin, "LAX Gunman's Wife Blames US."

³⁸ Dixon, Leonard, and Connell, "Those Who Knew LAX Killer."

³⁹ Holguin, "LAX Gunman's Wife Blames US."

attack for an extended period of time.⁴⁰ The spat between US and Israeli officials arose over differing definitions of what constitutes a terror attack. US officials weren't keen to call it a terror attack, seemingly because they would want to play down any panic less than a year after 9/11. US officials originally considered the potential for the attack to be a hate crime, which the FBI defines as a "...criminal offense against a person or property motivated in whole or in part by an offender's bias against a race, religion, disability, ethnic origin or sexual orientation." The FBI defines a terrorist attack as one that "is calculated to influence or affect the conduct of government by intimidation or coercion, or to retaliate against government conduct..." The understandably difficult determination has to be made as to whether this attack was made simply out of hate for Jewish people, or if there was an attempt to influence or respond to a government policy. The FBI and Justice Department eventually came to the conclusion that Hadayet's shooting action at LAX was indeed a terror attack.⁴¹ They deduced that the attack was terror based on the clearly premeditated targeting of the El Al terminal over a multitude of closer, more accessible options.

10. Coverage by the media

Less than a year after the largest terror attack in US history, on the fourth of July, any shooting would have certainly been very closely covered by all media outlets—and this incident was. The *Los Angeles Times* had a phenomenal article with a very detailed account of Hadayet's life only ten days after the shooting.⁴² The overall depiction in the media was speculative, yet responsible. Jewish media, such as JWeekly and Jewish Federations, had understandably negative reactions to the FBI's inability to quickly classify the attack as terrorism—although they also pointed out that the semantics did not matter nearly as much as the pain inflicted upon the victim's families.⁴³ Certain articles mentioned that Hadayet's family had left the country the week just before the shooting, but after the initial reports this misunderstanding was cleaned up.⁴⁴

The only substantial rumor that wasn't totally cleared up was a belief that Hadayet had complained about his neighbor hanging a large American flag above his door.⁴⁵ The overall narrative of this story, which was an AP report, implied that Hadayet had an implicitly anti-American sentiment which he had expressed to his apartment complex. A subsequent AP article clarified that no record of a report on Hadayet complaining about an American flag could be found, although a neighbor had mentioned it in an interview (the neighbor whose flag was in question declined to comment).⁴⁶

⁴⁰ Tugend, "Isolated Shooting or Terror Attack? U.S., Israel Have Different Answers."

⁴¹ CNN, "FBI, Justice: El Al attack was terrorism."

⁴² Dixon, Leonard, and Connell, "Those Who Knew LAX Killer."

⁴³ Tugend, "Lives cut short: mourning the victims of LAX attack."

⁴⁴ Krikorian, "No Link to Extremists in LAX Shootings."

⁴⁵ AP, "Neighbor's American Flag Angered Gunman."

⁴⁶ AP, "LA Airport Shooter Drew Little Attention."

11. Policing costs

The perpetrator was killed by undercover Israeli police shortly after he opened fire in LAX, therefore no trial occurred. An FBI review of the situation lasted approximately 9 months after the attack, with a report being issued on April 12, 2003 almost fully confirming earlier reports and suspicions of the case and officially calling the attack a terror attack rather than just a hate crime.⁴⁷

12. Relevance of the internet

Since Hadayet was the only individual involved in the attack, the internet has very little relevance in the case. A former employee of his limousine company mentioned that “Hadayet watched Arabic news on the satellite television station Al Jazeera and was upset about turmoil in the Middle East.”⁴⁸ After the attack, Hadayet’s computer was taken, but nothing substantial was found outside of confirming the belief that he acted alone without any terror network.⁴⁹

13. Are we safer?

As rare as they are, this incident was a true “lone wolf” attack. Hadayet was not a part of a terror network, nor was he likely to join one—in fact, he was not even a part of the Los Angeles Muslim community.⁵⁰ If we choose to believe the statements made by his family, this must have been some sort of random, depression-fueled rage he took out on a group of people he had animosity toward. If we choose to believe some statements gathered from a former employee, he was a ticking time bomb waiting to go off. My opinion tends to lean toward the former: he seems to have held radicalized views against the US and Israeli foreign policy, but he was not known to have expressed any statements advocating violence against ordinary citizens. It is fortunate that the El Al security guards were attentive and able to kill Hadayet before he was able to kill more than the two he did. Public safety at LAX and around the country has improved significantly since the attack, and likely some changes have been based on this attack itself.

14. Conclusions

Overall I feel very mixed emotions about this case. There are few lessons to be gleaned from it, other than airport security has to be attentive and secure to protect travelers. El Al already spends 16 times more on security than the average airline, and it is with good reason considering they have been the target of multiple attacks in the past few decades.⁵¹ A lesson we can take away from this case is that terrorism can manifest itself in many ways, irrespective of the body count. In a case like this, there is no network to trace, no manifesto to discover, no understandable method to the madness. Outside of beefing up airport security, there is no policy change that can prevent this type of event from occurring. All

⁴⁷ CNN, “FBI, Justice: El Al attack was terrorism.”

⁴⁸ Dixon, Leonard, and Connell, “Those Who Knew LAX Killer.”

⁴⁹ CNN, “FBI, Justice: El Al attack was terrorism.”

⁵⁰ AP, “INS: Airport Gunman Almost Deported.”

⁵¹ Rohrllich, “U.S. Pact Allows Use of Armed El Al Guards.”

we can hope is that the leaders of individual community groups, religious groups, and political groups loudly advocate for peaceful movements toward change they desire, hopefully dissuading those who hope to commit acts of terror.

Appendix

STATEMENT

OF

**WILLIAM YATES
DEPUTY EXECUTIVE ASSOCIATE COMMISSIONER
IMMIGRATION SERVICES DIVISION
IMMIGRATION AND NATURALIZATION SERVICE
DEPARTMENT OF JUSTICE**

REGARDING

HESHAM MOHAMED ALI HEDAYET

BEFORE THE

**HOUSE SUBCOMMITTEE ON IMMIGRATION, BORDER SECURITY, AND CLAIMS
HOUSE COMMITTEE ON THE JUDICIARY**

**WEDNESDAY, OCTOBER 9, 2002
3:00PM
2141 RAYBURN HOUSE OFFICE BUILDING**

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to share with you information resulting from the Immigration and Naturalization Service's (INS') review of its interactions with Hesham Mohamed Ali Hedayet, the Egyptian immigrant who shot and killed two people at Los Angeles International Airport on July 4, 2002. At the time of this tragedy, Mr. Hedayet was a lawful permanent resident of the United States. In December 1992, Mr. Hedayet filed an asylum application with INS. That application was denied in October 1995. Later, after his wife won a visa through the annual diversity visa lottery, Mr. Hedayet filed an adjustment of status application with INS. The INS interviewed him on this application and approved it in August 1997.

Particular attention to the INS role in this case was prompted by reports that Mr. Hedayet claimed in an asylum interview with INS that he had been falsely accused of belonging to Gama'a al-Islamiyya. The Department of State designated Gama'a al-Islamiyya as a terrorist organization in 1997, almost two years after INS denied his asylum application. Before I begin an overview of Mr. Hedayet's interaction with INS, I want to assure you a thorough review of all information available to INS about Mr. Hedayet's background reveals no enforcement or intelligence information that he was ever associated with a terrorist organization, or had engaged in any criminal activity prior to July 4, 2002. In addition, based on a thorough review of Mr. Hedayet's alien file, computer system records, and relating receipt files, INS has concluded that its decisions in connection with the asylum and adjustment of status applications were appropriate under the laws, regulations, policies and procedures in existence at the time.

My testimony will outline how INS followed regulations and procedures in place at the time Mr. Hedayet's applications were processed, and how INS has both improved processing procedures and strengthened security measures since then. However, it is important to understand that, even had Mr. Hedayet's applications been processed under the improved procedures in existence today, the outcome may have been the same. The current procedures, however, provide for a more thorough investigation and more opportunities to scrutinize potentially problematic cases.

As I noted, there was no evidence that Mr. Hedayet was ever associated with a terrorist organization or had engaged in criminal activity. The only indication that Mr. Hedayet could pose a threat to others in the United States was his own assertion that he was falsely accused of being a member of an organization that committed terrorist activities and that these allegations were used as a pretext to persecute him because of his religious beliefs. His asylum claim was found not entirely credible and was denied. There is no evidence that the alleged false accusation of his membership in the terrorist organization was true or that he was actually a member of such an organization.

A brief chronology of INS interaction with Mr. Hedayet is as follows:

On July 31, 1992, he was admitted to the United States as a visitor with permission to remain in the United States until January 25, 1993. The multiple entry B-2 visa, valid for one year, was issued on July 13, 1992 at the American Embassy in Cairo, Egypt. On December 29, 1992, Mr. Hedayet filed an asylum application claiming discrimination and police harassment due to his religious beliefs. An application for employment authorization accompanied the asylum application. The employment authorization application was approved on March 8, 1993, and an employment authorization document (EAD) was issued. Mr. Hedayet was interviewed regarding his asylum claim on March 30, 1993. He testified that he had been arrested and tortured multiple times, and was also made to sign documents admitting his membership in Gama'a al-Islamiyya. He states that he is not a member of Gama'a al-Islamiyya but of Assad Eben Furat Mosque Association, an organization that advocates the application of Islamic laws in Egypt.

On March 18, 1994, Mr. Hedayet applies to renew his EAD based on the pending asylum application. His application is approved and a new EAD is issued. On March 7, 1995, INS issues a Notice of Intent to Deny the asylum application. On April 27, 1995, the INS approves another renewal of Mr. Hedayet's EAD based on the pending asylum application.

The notice of denial on Mr. Hedayet's asylum application is dated October 19, 1995. In addition, the INS issued an Order to Show Cause charging him as a deportable alien based on his overstay of his visitor visa. These are returned to INS as undeliverable mail on January 30, 1996. In June 1996, INS renews Mr. Hedayet's employment authorization after reviewing his file and determining that he was not in deportation proceedings and therefore entitled to the EAD based on his pending asylum application.

Mr. Hedayet files an adjustment of status application in January 1997 as the spouse of a diversity visa recipient, and his fingerprints are submitted to the FBI for a criminal history check. In May 1997, the INS initiates name checks for derogatory information on Hedayet with the FBI and CIA. Mr. Hedayet is interviewed and his application is approved for adjustment of status on August 29, 1997.

Improvements to Asylum Processing

It is important to acknowledge that numerous improvements have taken place in the years since Mr. Hedayet first filed his asylum application. I would like to use the remainder of my statement to highlight these improvements in processing both asylum and adjustment of status applications.

First, it is likely Mr. Hedayet would have received personal service of charging documents placing him in removal proceedings two weeks after his asylum interview.

Second, if he failed to appear for his hearing before the Immigration Judge, it is likely he would have been ordered removed in absentia if the INS could prove he was served with the charging document. He would also have been ineligible for employment authorization because of his failure to appear.

Third, if he had appeared for his hearing before the Immigration Judge, he still would not have been eligible for employment authorization, unless his asylum application was granted by the Immigration Judge or was pending more than 180 days.

Fourth, as soon as INS received his application, it would have automatically sent his biographical information electronically to the Central Intelligence Agency (CIA) and Federal Bureau of Investigation (FBI) for background checks, and scheduled him to have his fingerprints taken at an Application Support Center.

Finally, his allegation of being accused of membership in a terrorist organization would have triggered referral of his case to Asylum Headquarters (HQASY), which would then consult with the National Security Unit and the National Security Law Division, for further scrutiny.

These distinctions are a result both of asylum reform and security measures INS has continued to strengthen over the past six years. In 1995, asylum reform streamlined the asylum process and created a seamless referral process, giving asylum offices access to the Immigration Courts' calendars to directly schedule referred applicants for hearing in Immigration Court. The requirement that most applicants return to be served with a decision ensures timely decision-making and clear evidence of service of charging documents.

Under asylum reform procedures, it is likely Mr. Hedayet would have been scheduled for an interview within 43 days from the date he filed his application. Importantly, he would have been scheduled to return to the asylum office two weeks after his interview to be served with the decision on his application. As he was found ineligible for asylum and was not in valid status, the asylum office would have personally served him with charging documents within 60 days from the date he applied for asylum, thereby placing him in deportation proceedings. The charging documents would have contained a time and date for his first hearing with the Immigration Judge. Because Immigration Judges are required by statute to complete most asylum cases within 180 days, in all likelihood, Mr. Hedayet would have received a final determination on his asylum application and, if found ineligible, received an order of deportation or voluntary departure, within 180 days from the date he applied for asylum. If he failed to appear for his hearing before the Immigration Judge, the Immigration Judge would likely have ordered him removed in

absentia, rather than have administratively closed the case, because INS would have been able to present proof of service of the charging documents.

Additionally, Mr. Hedayet would not have been eligible to apply for employment authorization until 150 days from the date he filed his asylum application. Further, he would not have been eligible for a grant of employment authorization, unless his application remained pending 180 days after the date of filing or was granted by the Immigration Judge. If Mr. Hedayet had not shown up to pick-up his decision two weeks after the interview, he would have been ineligible to apply for employment authorization. If he failed to appear for the hearing before the Immigration Judge, he would have been ineligible for employment authorization unless he could establish exceptional circumstances for the failure to appear.

Current directives require Asylum Offices to notify Asylum Headquarters (HQASM) of asylum claims involving potential terrorists, including any case in which an applicant claims he or she has been accused of terrorist activities or terrorist associations. However, at the time that INS denied Mr. Hedayet's asylum claim in April 1995, specific notification requirements for any asylum applicant who admitted to having been accused of being a member of a terrorist organization were not yet established. Moreover, the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) had not yet been enacted, so the current list of organizations designated as terrorist organizations by the Secretary of State pursuant to section 219 of the INA was not yet in existence. The Department of State published its first list of 30 terrorist organizations on October 8, 1997. It included the Gama'a al-Islamiyya.

At the time of the decision on Mr. Hedayet's asylum application, procedures required biographical information to be sent to the CIA by sending the CIA a copy of the Form G-325, Biographic Information, only if the case was recommended for approval. Also, at that time, a fingerprint card submitted by the applicant was sent to the FBI only if the case was recommended for approval. Under current procedures, electronic tapes with biographical information on all asylum applicants are sent to the CIA and the FBI. If those agencies have any adverse information on the applicant, that information is transmitted to INS' National Security Unit (NSU). All applicants are routinely scheduled to have their fingerprints taken electronically at an Application Support Center and the asylum application cannot be approved until INS receives the results of the FBI fingerprint check. In addition, background checks are conducted against the Interagency Border Information System (IBIS) on all asylum applicants at the time of filing and before a decision is made if the last check was done more than 35 days prior to the decision. The application itself is sent to the Department of State for an opportunity to provide any comments or information. Records indicate that Mr. Hedayet's asylum application, along with the asylum officer's assessment, were sent to the Department of State on January 30, 1995. No response was received which was standard procedure when the Department of State either had no interest in the case or no additional information to add to the case.

Improvements to Adjustment of Status Processing

The record of Mr. Hedayet's adjustment processing indicates that INS received his application on or before January 6, 1997, and that his fingerprints were forwarded to the FBI for a criminal history check on that date. In addition, Mr. Hedayet's adjustment of status application was filed with payment of the additional penalty sum, as required under section 245 (I) of the Immigration and Nationality Act (INA).

The INS Los Angeles District Office had jurisdiction to adjudicate the application despite the fact that an Order to Show Cause (OSC) had previously been filed with the Immigration Court. The controlling regulation at that time was found in 8 CFR 245.2(a)(1) as in effect on January 1, 1997, and states, "After an alien has been served with an order to show cause or warrant of arrest, his application for adjustment of status under section 245 of the Act or section 1 of the Act of November 2, 1966 shall be made and considered only in proceedings under part 242 of this chapter." Former Part 242 referred to deportation proceedings within the purview of the Immigration Court. In this case, the record clearly established that the OSC had not been served upon the Mr. Hedayet and, therefore, that INS had jurisdiction over the application.

At the time Mr. Hedayet filed his adjustment of status application, INS had discretion to serve him

with a copy of the OSC, or to adjudicate the application. If INS had decided to serve him with the charging document, the Immigration Court would then have had jurisdiction to adjudicate the adjustment of status application. As a general matter, INS exercises favorable discretion as early in its processes as possible in recognition of the government's and the alien's interest in avoiding unnecessary legal proceedings. Although Mr. Hedayet's record does not reflect the decision process not to serve him with the charging document, it would have been considered an unnecessary step to do so when he was prima facie eligible to adjust his status.

Improvements to Application Processing

Since INS adjudicated Mr. Hedayet's adjustment of status application, INS has made several improvements to application processing, particularly in the area of background checks. These improvements include:

- Electronic transmission of applicant fingerprint checks directly to the FBI after verification of applicant's identity by INS personnel;
- Confirmed FBI responses to fingerprint checks and review of criminal record, if applicable, before scheduling an applicant for interview;
- Electronic data exchanges with the FBI and CIA on biographic information;
- Adverse information revealed by FBI or CIA biographic information checks is transmitted to NSU and adjudication of the application withheld until the information is resolved;
- IBIS ("look out") checks on all applications and petitions at the time of filing and again before adjudication if the first check was conducted more than 35 days prior to adjudication; and
- A national Standard Operating Procedure governing all adjustment of status applications and a Quality Assurance program to ensure compliance with the standard procedures.

Conclusion

This concludes my testimony and I look forward to responding to any questions that you may have.