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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE:

Office: NEWARK, NEW JERSEY

Date: JAN 02 2008

IN RE:

Applicant:

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.

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, Newark, New Jersey, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant, [REDACTED] is a native and citizen of Sierra Leone 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 seeking admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the director denied, finding the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated October 28, 2005. The applicant submitted a timely appeal.

The AAO will first address the finding of inadmissibility pursuant to 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.

The record conveys that the applicant misrepresented his marital status to immigration officials so as to obtain a nonimmigrant visa and gain entry into the United States. The AAO therefore finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for seeking to gain admission into the United States by fraud or willfully misrepresenting a material fact to immigration officials.

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted.

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.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and his children are not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, they are not included under section 212(i) of the Act. Thus, hardship to the applicant and his children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is [REDACTED], the applicant's naturalized citizen wife. 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 record contains photographs; a psychosocial/family evaluation by [REDACTED], L.C.S.W., A.C.S.W.; school records; a lease agreement; invoices; affidavits; medical insurance documentation; employment letters; income tax records; wage statements; documentation on Sierra Leone; birth certificates; and other documents. The AAO has carefully considered all of the documentation in the record in rendering this decision.

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative’s family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative’s ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* at 565-566. The BIA indicated that these factors relate to the applicant’s “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant’s wife must be established in the event that she joins the applicant; and in the alternative, that she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

On appeal, counsel states that the expert’s report and country conditions in Sierra Leone were not properly considered in assessing hardship. He states that the applicant’s wife would experience extreme financial and, as shown by the expert’s report, emotional and psychological hardship if her husband were removed from the United States.

The affidavit by [REDACTED] states that her three children live with her mother in Sierra Leone, that the applicant is the father figure for her children, and that the applicant financially assists the children. She states that her husband has four children of his own who he financially supports: two children live in the United States and two children live in Sierra Leone. She states that her family house and her husband’s family house were located in Freetown, Sierra Leone, and that their houses were burned in 1999 in the civil war that devastated the country. [REDACTED] states that the applicant’s U.S. citizen children would suffer extremely if he were deported as he is their father figure and financial supporter. She states that she is like a mother to her stepchildren, and if her husband were deported, the mother of her stepchildren would not let the children come to visit.

In the supplemental affidavit [REDACTED] states that she depends on her husband financially and emotionally. She states that her dream of buying a house and living together with her children and mother would be

shattered without her husband. She states that she earns \$22,360 a year as a nurse's aide and would not be able to support her three children without the applicant's income and that she is \$2,000 below the current poverty-income guidelines. [REDACTED] states that she filed petitions for her children to immigrate to the United States. She states that she and the applicant provided \$3,500 last year to assist her mother with hospitalization and medication costs. She states that she would not be able to support herself in Sierra Leone and would be socially stigmatized. She states that she and the applicant see his children, [REDACTED] and [REDACTED] four times a year as their mother lives in Georgia. [REDACTED] conveys that the applicant is in touch with his U.S. citizen children regularly, that he provides money to them, that he pays their medical expenses.

The affidavit from [REDACTED] the applicant's former wife, states that the applicant provides financial assistance to her and her children, who are six and nine years old. She states that the court permitted her to move the children to Georgia, where her family lives. She states that she earns \$7 per hour as a nursing aide and would not be able to support her children without the applicant's monthly contribution of \$560 and provision of medical insurance for the children. She indicates that the children have a close relationship with the applicant.

The record reflects that [REDACTED] filed immigrant petitions for her three children and that two of the children are now living with her and the applicant in the United States.

The affidavit of support indicates that [REDACTED]'s annual salary is \$22,360, earning \$10.75 per hour, and the income tax records for 2003 reflect her income was \$27,395. The applicant's income for 2003 was \$38,449.

The employment letter dated May 21, 2005 from the Jewish Senior Housing and Healthcare Service, Jewish Geriatric Home, reflects that [REDACTED] is employed full-time as a certified nursing assistant, earning \$10.75 per hour. The letter states that she has been employed there since 2001.

The employment letter dated June 7, 2005 from New England Motor Freight shows the applicant was hired on April 19, 2005 and is employed full-time, earning \$18 per hour. He earned \$720 for the period ending May 21, 2005, as shown on the submitted wage statement.

The 2004 income tax return shows joint income of \$83,375.

The assessment by [REDACTED] a licensed clinical social worker, conveys that in Sierra Leone the applicant's family home was burned to the ground and so was his wife's. [REDACTED] states that [REDACTED] is grateful for the care that the applicant has shown her and her children in Sierra Leone. She states that the children call the applicant "Daddy." [REDACTED] states that the [REDACTED] have the applicant's two children, [REDACTED] and [REDACTED], for Christmas, spring breaks, and for five weeks during the summer. She states that the [REDACTED] share a deep desire to live a family-centered life with everyone under one roof. She states that [REDACTED] would like to return to school to study a different field. However, she conveys that [REDACTED] is worried about the economic ramifications of her husband's deportation to not only herself, but on "all of the children involved both here and in Africa," as the applicant has been the major income earner in the family and would not be able to replicate his salary in Sierra Leone. [REDACTED] states that [REDACTED] has trouble sleeping, has developed headaches and neck pain, and has depression and anxiety about her husband's situation.

The affidavit by [REDACTED] a cousin of [REDACTED] and a friend of the applicant, states that it would be an extreme hardship on both families if [REDACTED] were forced to leave the United States. He states that

his cousin depends on her husband and that the applicant is very close to her children and he helps support the entire family. He conveys that the couple would split up because it is too dangerous and desolate for [REDACTED] to go back to Sierra Leone. He states that the applicant's former spouse would not let the children travel to Africa to visit their father or visit his present wife if she remained in the United States.

The record contains documentation about Sierra Leone: a Department of State country report on human rights practices for 1991, a country report on human rights practices in 2004, a country report by the World Bank Group, and a publication by the Central Intelligence Agency (CIA).

The record reflects that [REDACTED] would experience extreme hardship if she remained in the United States without her husband.

[REDACTED] claims that she would experience financial hardship if she remained in the United States without the applicant. The documentation in the record shows that [REDACTED] has filed immigrant petitions for her three children, who are 13, 14, and 16 years old, and that two of her children are now living with her in the United States. The record shows that she earns \$10.25 per hour and that her monthly rent is \$796. The record also conveys that [REDACTED] is concerned about not having her stepchildren visit her if she were to remain in the United States without the applicant, and is worried about their financial well-being without the applicant's financial support. The AAO finds that the record supports a finding that the applicant's wife would experience extreme hardship if the applicant were removed from the United States.

The AAO finds that the applicant's wife would experience extreme hardship if she were to join her husband in Sierra Leone.

The U.S. Department of State Country Report on Human Rights Practice, 2004, conveys that in Sierra Leone in 2004 per capita Gross Domestic Product was approximately \$150, with two-thirds of the population engaged in subsistence agriculture. It reflects that approximately 60 percent of the government's budget came from foreign assistance and that the infrastructure was "devastated by years of fighting and decades of corruption and mismanagement." It indicates that female genital mutilation remained widespread.

The CIA publication, *The World Fact Book*, states that:

The 1991 to 2002 civil war between the government and the Revolutionary United Front (RUF) resulted in tens of thousands of deaths and the displacement of more than 2 million people (about one-third of the population), many of who are now refugees in neighboring countries.

...

[T]he gradual withdrawal of most UN Mission in Sierra Leone (UNAMSIL) peacekeepers in 2004 and early 2005, deteriorating political and economic conditions in Guinea, and the tenuous security situation in neighboring Liberia may present challenges to the continuation of Sierra Leone's stability.

Based on Sierra Leone's economic, political, and social conditions, as shown in the submitted documentation, the AAO finds that the applicant's wife would experience extreme hardship if she were to join her husband.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

Thus, in the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has been met so as to warrant a finding of extreme hardship under section 212(i) of the Act. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

The grant or denial of the above waiver does not depend only on the issue of the meaning of "extreme hardship." Once extreme hardship is established, the Secretary then determines whether an exercise of discretion is warranted.

The adverse consideration in the present case is the applicant's misrepresentation and unlawful entry, and periods of unauthorized presence and employment.

The favorable factors in the present case are the applicant's family ties to the United States; the extreme hardship to the applicant's wife if he were removed; his stable employment and payment of income taxes; letters from the applicant's wife, former spouse, and friend attesting to his good character; and the applicant's long duration of residence in the country. The AAO notes that the applicant does not appear to have a criminal record.

The AAO finds that although the immigration violation committed by the applicant is serious in nature 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 applicant merits a waiver of inadmissibility.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.