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U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: BALTIMORE, MD Date: JUN 09 2006

IN RE: [redacted]

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

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Sierra Leone who was admitted to the United States on February 12, 1992, as a student. The applicant was found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant married a United States citizen and he is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), to remain in the United States with his spouse and child.

The district director concluded that the applicant had failed to establish extreme hardship would be imposed upon his qualifying relatives and denied the application accordingly. *Decision of the District Director*, dated April 14, 2004.

On appeal, counsel states that the applicant's spouse and daughter will suffer extreme hardship as a result of the applicant's inadmissibility because country conditions in Sierra Leone are extremely poor and the spouse's financial and medical condition means separation from her husband will also result in extreme hardship. *Counsel's Brief*, dated May 14, 2004.

Section 212(a)(i) of the Act states in pertinent part, that:

> (A)(i) Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime, . . . is inadmissible.

Section 212(h) of the Act provides, in part, that: - The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . if –

> (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that –
>
> (i) the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status;
> (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and;
> (iii) the alien has been rehabilitated; or
>
> (B) in the case of an immigrant who is the
> spouse , parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the

> United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .
>
> (2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status . . . . No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

In the applicant's case the activities that led to his conviction occurred from January 15, 1999 to January 22, 1999 and less than 15 years have elapsed since these acts. Therefore, the applicant is ineligible for the waiver provided by section 212(h)(1)(A) of the Act. The question remains whether the applicant qualifies for a waiver under section 212(h)(1)(B) of the Act.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme". Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. *Matter of Ngai*, 19 I&N Dec. 245 (Comm. 1984). "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

> 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).

The AAO notes that in *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, "the most important single hardship factor may be the separation of the alien from family living in the United States", and that, "[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." (Citations omitted.)

The AAO notes further, however, that U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The AAO finds that extreme hardship to the applicant's spouse and child must be established in the event that they reside in Sierra Leone or in the event that they reside in the United States, as they are 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.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse and child in the event that they reside in Sierra Leone. In her affidavit the applicant's spouse asserts that she and her child will suffer extreme hardship if they relocate to Sierra Leone. The applicant's spouse states that her grandmother, parents and siblings all reside in the United States and she has no family in Sierra Leone. In addition, Sierra Leone is suffering from a civil war and is extremely poor. Her daughter would not be able to obtain an education and the spouse would not have access to the medical care she requires. In support of these assertions, the applicant submitted the 2003 State Department Human Rights Report for Sierra Leone. The State Department report shows that Sierra Leone is a particularly difficult country for women. The report states on page nine that rebel forces continue to force women and girls to act as sex slaves and that female genital mutilation is practiced widely at all levels of society. Furthermore, women face societal discrimination and they do not have equal access to education, economic opportunities, health facilities or social freedoms. The AAO notes that the more current 2005 State Department Human Rights Report for Sierra Leone shows that the situation in the country has not improved. The 2005 report states that societal discrimination and violence against women, female genital mutilation, child abuse, trafficking in persons, and forced labor remained problems. Based on the 2003 and 2005 State Department Human Rights Report, it is clear that the applicant's spouse and child will suffer extreme hardship as a result of relocating to Sierra Leone.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse and child remain in the United States. The applicant's spouse states that she suffers from sickle cell trait and since the birth of her daughter, chronic pelvic pain. She states that these problems cause her to feel weak and requires her to regularly monitor her health, seeing her doctor every two months. The applicant's spouse submits a letter from her doctor, [redacted] May 14, 2004. In his letter he states that the applicant has been diagnosed with sickle cell trait and since the delivery of her daughter she has been suffering from chronic pelvic pain. He states that she must monitor her health so that her blood pressure does not drop too low making her faint and dizzy. Finally, he states that the applicant's spouse visits his office often to obtain antibiotics for her pelvic pain and associated infections. The record does not show that the spouse is dependant on the applicant in maintaining her well-being and there is no evidence to show that the spouse's other family members cannot help her with maintaining her medications.

In addition to her medical condition the applicant's spouse states that her and her daughter will suffer emotionally and financially from the applicant's inadmissibility. She asserts that she works part-time while her husband works full-time, bringing home ninety percent of the household income. She also states that her husband helps with childcare while she attends school and her daughter is very close to her father. She feels that separation would be devastating to her four-year old daughter. The AAO notes that the record shows that that applicant's spouse is a trained nurse. There is no documentation in the record showing that the applicant's spouse could not work full-time and earn enough income to support herself and her daughter. The AAO realizes that the applicant may have to postpone her schooling but this type of lifestyle change is a normal consequence of a spouse's removal. In addition, the record does not include any documentation that shows the daughter's emotional condition is any greater than other children in her situation. Therefore, the AAO finds that a thorough review of the entire record does not reflect that separation will result in extreme hardship to the applicant's spouse and child.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse and child caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.