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
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

H5

Date: DEC 0 6 2011 Office: ACCRA, GHANA FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Accra, Ghana. 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 Sierra Leone who was found to be inadmissible to the United States pursuant to 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. The applicant is the daughter of a lawful permanent resident 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 father and her son in the United States.

The acting field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Acting Field Office Director*, dated July 30, 2008. On appeal, counsel contends the applicant's waiver application recited the facts incorrectly and did not address or consider all of the positive factors in the case. Counsel requested an additional thirty days in which to file a brief. The record contains no additional materials, so on March 11, 2011, the AAO contacted counsel to request a copy of the brief. There has been no response from counsel and, therefore, the record is considered complete.

The record contains, *inter alia*: letters from the applicant; letters from the applicant's father, [redacted] letters from the applicant's sister; letters from the applicant's son, [redacted] copies of tax documents; a removal order from an immigration judge; 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 pertinent part:

> 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, in pertinent part:

> (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 when she entered the United States in March 1990, she had stated on her visa application that she was the unmarried daughter of a lawful permanent resident when she was, in fact, married. *Affidavit of* [redacted] dated September 27, 1993. Therefore, 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.

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-,* 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a

result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In this case, the applicant's father, [redacted] states that the applicant is his youngest child. [redacted] states he has many illnesses and that his daughter's presence would help him. He contends he needs to go to a doctor and has been referred to specialists, but he cannot go because he has no insurance. He states he is eighty-one years old and is grieving every minute of the day. *Letter from* [redacted], dated August 19, 2008.

The applicant's sister, [redacted] states that their father's eyesight has diminished over the years, is almost completely blind, and desperately needs cataract surgery. She states that her father feels powerless because he has lost his wife and two of their children, and that all he wants is to have his remaining family by his side during the end of his life. She states her father is in pain, grieving and suffering every day, and that he asks for mercy. *Letters from* [redacted] dated July 24, 2009, and August 19, 2008.

A letter from the applicant's son, [redacted] states that he was four years old when his mother left the United States and never returned. [redacted] states that he is now in college and that his aunt [redacted] raised him, but that she has two daughters of her own and takes care of his sick grandfather. According to [redacted] his grandfather has lost his sight, does not eat, and suffers from delusions. In addition, [redacted] contends he feels like he is different from everyone else and has anger issues, so he fights a lot. *Letters from* [redacted] dated August 20, 2009, and April 9, 2008.

The applicant states she has been separated from her son since July 1994. She contends she left her son with her sister due to the civil war in Sierra Leone and because she wanted her son to have a decent life and education. The applicant states her son visited her in Sierra Leone in 2001, but did not enjoy his visit. She states that the government in Sierra Leone is corrupt and that there are many problems, including political and religious problems. In addition, the applicant states that her father "is very fragile and does not go anywhere." *Letters from* [redacted] dated April 9, 2008, February 7, 2005, and September 29, 1998.

The AAO finds that if [redacted] had to move to Sierra Leone to be with his daughter, he would experience extreme hardship. The record shows that [redacted] is currently eighty-four years

old. According to family members, he suffers from health problems and has impaired vision. The AAO takes administrative notice that the U.S. Department of State states that "[m]edical facilities in Sierra Leone fall critically short of U.S and European standards[,] . . . [m]any primary health care workers . . . lack adequate professional training[, and q]uality and comprehensive medical services are very limited . . . ." *U.S. Department of State, Country Specific Information, Sierra Leone*, dated December 21, 2010. Furthermore, entrenched poverty has led to criminality and corruption is a serious problem at all levels within the government of Sierra Leone. *Id.* Considering these unique circumstances cumulatively, the AAO finds that the hardship [redacted] would experience if he had to move back to Sierra Leone is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that the applicant's father would experience extreme hardship if he remains in the United States without his daughter. Though little documentation was provided regarding [redacted] medical conditions, the AAO takes note of his advanced age and the normal health problems that come with age. In addition, inadmissibility under section 212(a)(6)(C)(i) is a permanent bar with no exceptions for time as in other grounds of inadmissibility. As such, the AAO acknowledges that this permanent bar may mean that [redacted] will never see his daughter again. The AAO finds this to be hardship that goes beyond the norm.

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 factors in the present case include the applicant's misrepresentation on her visa application, periods of unauthorized presence in the United States and her removal. The favorable and mitigating factors in the present case include: significant family ties in the United States including her U.S. citizen father, son and siblings; the extreme hardship to the applicant's father if she were refused admission; hardship to her son: her compliance with the removal order by not attempting to reenter the United States prior to ten years after her removal; and no evidence of any criminal activities.

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.