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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

#5

[redacted]

FILE: [redacted] Office: NEW YORK, NEW YORK Date: MAR 04 2011
[redacted] consolidated therein)

IN RE: Applicant: [redacted]

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:

[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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that the applicant is a native and citizen of Liberia 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 procuring admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a United States citizen and the father of a United States citizen. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his wife and son.

The Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated June 26, 2008.

On appeal, the applicant, through counsel, asserts that "new facts have been disclosed to [them] which show that there was no fraud or willful misrepresentation of a material fact by [the applicant] and thus, a I-601 was not needed." *Form I-290B*, filed July 25, 2008. Alternatively, counsel claims that if United States Citizenship and Immigration Services (USCIS) "finds that a I-601 waiver is still required, [they] make this appeal based on the [USCIS'] improper application of the law." *Id.*

The record includes, but is not limited to, counsel's appeal brief, statements from the applicant and his wife, a social work assessment on the applicant and his family, tax documents, insurance documents, a bank statement, articles on country conditions in Liberia, and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) 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.
>
> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

> (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], 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 resident spouse or parent of such an alien...

In the present case, the record indicates that on November 5, 1991, the applicant entered the United States using a counterfeit nonimmigrant visa.

In counsel's undated appeal brief, counsel asserts that "[b]ased on new and additional information [a]pplicant wishes to have considered, to wit, that [a]pplicant did not, by fraud or willfully misrepresenting a material fact, seek to procure admission into the United States." In a statement dated July 23, 2008, the applicant states he did not know the nonimmigrant visa he used to enter the United States in November 1991 was counterfeit. He claims that he now knows "the visa [he] used to enter the US was a fake. However, [he] did not know it before [he] was told by Immigration at [his] asylum interview" in 1997.

The AAO finds counsel's and the applicant's contention that the applicant is not inadmissible to the United States through the misrepresentation of a material fact to be unpersuasive. The AAO observes that in waiver proceedings the burden of proof is on the applicant to establish admissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The AAO notes that the record establishes that on November 5, 1991, the applicant was interviewed by an immigration inspector at the JFK airport, New York, where he was asked how he obtained the counterfeit nonimmigrant visa, and the applicant replied that he received the visa from his father's friend. The fact that the applicant obtained the visa from his father's friend supports that he had knowledge that he did not acquire it by official means or from a U.S. officer. The applicant in this matter has submitted no documentary evidence establishing that when he entered the United States, he had no knowledge that he was entering on a counterfeit entry document. Further, although the applicant asserts that his passport was taken from him in Brazil en route to the United States, the record supports that he presented his counterfeit B-1 visa at the JFK airport in New York. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting a material fact in order to seek admission into the United States.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. 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. As the Board of Immigration Appeals (Board) stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (BIA 1996).

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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) [redacted] was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The first prong of the analysis addresses hardship to the applicant's wife if she relocates to Liberia. In a statement dated May 29, 2008, the applicant's wife states "[i]t would create an extreme hardship for [her] and [her son] to live in an alien culture, where the society has been racked by years of war and is still unstable." In a letter dated June 9, 2008, counsel claims that in Liberia "[t]here is very little infrastructure, massive unemployment, no health care system, and severe discrimination against women in the workforce." Counsel states the applicant's wife and son would "be at risk for all sorts of medical problems," "there is massive violent crime" in Liberia, the applicant's wife "has no family ties or any other connection to Africa," "[v]arious country reports [evidence] poor country conditions in Liberia," and "the financial impact of [the applicant's wife's] departure from this country would be 'unusual and beyond that which would normally be expected'." Counsel also states the applicant's wife "would be giving up her career, by relocating to Liberia." The applicant's wife states "there are no comparable jobs" in Liberia, she has no professional contacts in Liberia, and she "would be giving up a long standing, lucrative career that [she] [has] worked very hard to attain." In a social work assessment dated October 15, 2009, [redacted] indicates that the applicant's wife "would have great difficulty moving to Liberia," it "is unlikely that she would be able to find any kind of job," it would be "a hardship on her to be far away from her family members in New York," and "she would no longer be able to provide financial assistance to her father, stepmother and mother." The applicant's wife states it would be "financially impossible" for her family to visit her in Liberia. The AAO acknowledges the claims made regarding the difficulties the applicant's wife would face in relocating to Liberia.

[redacted] indicates that the applicant's son "suffers from enlarged adenoids." [redacted] states it is "unlikely that [the applicant's son] would be able to get the medical attention he would need" and there is a lack of educational opportunities for him in Liberia. Additionally, [redacted] states if the applicant's son joined the applicant in Liberia, "he would be deprived of the company and support of his network of relatives who live in New York." The applicant's wife states she wants to raise her son in the United States. The AAO notes that the concerns regarding the applicant's son relocating to Liberia.

The AAO notes the claims made regarding the applicant's wife financially assisting her parents; however, there is no documentary evidence in the record establishing that the applicant's wife provides any financial assistance to her parents. Additionally, if the applicant's wife provides financial assistance to her parents, there is no documentary evidence establishing that she cannot continue to provide that financial assistance from a location outside the United States. Further, the AAO notes that other than Mr. Mailman's assessment, no medical documentation has been submitted establishing that the applicant's son suffers from any medical conditions or the severity of his medical conditions. The AAO notes that

other than general articles on health care in Liberia, the record does not include supporting documentary evidence that the applicant's son cannot receive appropriate treatment for his claimed medical issue in Liberia. The AAO acknowledges that the applicant's wife is a native of Jamaica and citizen of the United States and that she may experience some hardship in relocating to Liberia. The AAO notes that the applicant submitted articles on country conditions in Liberia; however, the submitted articles do not establish that the applicant's wife would be unable to obtain employment in Liberia. Therefore, based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Liberia.

In addition, the record does not establish extreme hardship to the applicant's wife if she remains in the United States. Counsel states the applicant's wife "has demonstrated emotional hardship," she "loves [the applicant] very much," and if the applicant is removed from the United States "she would be forced to live apart from [a]pplicant and they would be permanently separated."

[redacted]ndicates that the applicant "provides at least a quarter of the family income" and "the absence of his income would become a hardship for [the applicant's wife]." He indicates that the applicant's wife wants to go back to school to obtain her Master's degree; however, she "would have to set aside this plan if [the applicant] were deported to Liberia." [redacted] reports that the applicant and his wife have a mortgage payment, household expenses, costs of raising a child, the applicant's wife provides financial assistance to her father and stepmother, and she sends money to her mother in Jamaica. The applicant's wife states "given the demands of [her] career, [the applicant] is primarily responsible for picking up [their] son from daycare/school while [she] work[s] long hours and travel[s] during the fall and summer months." She states her son "has a close bond with [the applicant]." Mr. [redacted] reports that the applicant's wife "stated that if she had to become the sole caretaker for her son she would very likely have to leave her job." Counsel states the applicant's wife would have to pay for childcare, "miss more days of work," and it would be an "emotional toll on both" the applicant's wife and son. The AAO notes the financial concerns of the applicant's wife.

The AAO finds the record to include some documentation of the applicant's wife's income and expenses; however, this material offers insufficient proof that she will be unable to support herself in the applicant's absence. The AAO notes that financial documentation in the record establishes that the applicant's wife will encounter some economic challenges upon the applicant's departure. However, the applicant has not distinguished his wife's financial challenges from those commonly experienced when a spouse remains in the United States alone. Additionally, the submitted evidence does not establish that the applicant would be unable to obtain employment in Liberia and, thereby, financially assist his wife from outside the United States. Further, the applicant has not distinguished his wife's emotional hardship due to family separation from that which is commonly experienced when spouses reside apart as a result of inadmissibility. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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)(6)(C)(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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.