identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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

PUBLIC COPY

#5

[redacted]

Date: MAY 06 2011 Office: COLUMBUS, OHIO FILE: [redacted]

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 Field Office Director, Columbus, Ohio, 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 an immigration benefit through fraud or willfully misrepresenting a material fact. The record indicates that the applicant is married to a United States citizen and the mother of seven children. She 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 her husband, children, and grandchildren.

The Field Office 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 Field Office Director*, dated September 10, 2008.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) "erred by not considering all of the relevant indicia of extreme hardship, in the aggregate." *Form I-290B*, filed October 10, 2008. Additionally, counsel claims that USCIS "erred by not finding that [the applicant's husband]...would suffer an extreme hardship in the event that [the applicant] was deemed inadmissible to the United States and sent back to Liberia" *Id.*

The record includes, but is not limited to, counsel's appeal brief; affidavits from the applicant and her husband; letters of support for the applicant and her husband; a letter from [redacted] regarding the applicant's husband's medical conditions; franchise documents for the applicant's husband's business; civil court, tax, and insurance documents; household bills; a lease agreement; country condition documents on 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 the applicant provided a fraudulent birth certificate and inaccurate information in support of her claim for asylum. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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) ("Mr. Arrieta 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 a qualifying relative, 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 spouse if he relocates to Liberia. In counsel's appeal brief filed October 10, 2008, counsel claims that the presence of the applicant's husband's children in the United States; the medical, economic, and political conditions of Liberia; and the applicant's husband's established ties to the United States indicate that the applicant's husband would suffer extreme hardship if he joins the applicant in Liberia. In an affidavit dated July 14, 2008, the applicant's husband states he has "many health issues." Counsel claims that the applicant's husband "is blind in one eye, has an enlarged heart, and takes medication for his high blood pressure."

In a letter dated July 14, 2008, [redacted] indicates that the applicant's husband "has left eye blindness, hypertension and cardiomegaly," and he is on two medications. [redacted] states the applicant's husband "needs reasonable medical attention." Counsel states that the applicant's husband "would not be able to obtain his prescription medication, and there are no emergency services available" in Liberia. The AAO notes that counsel submitted a U.S. Department of State travel document on Liberia which indicates that "[h]ospitals and medical facilities are very poorly equipped and are incapable of providing many services. Emergency services comparable to those in the U.S. or Europe are non-existent.... Medicines are scarce." The applicant's husband states he "cannot handle the emotional and mental trauma that [he] will be caused if [he] move[s] to Liberia." Counsel states the applicant's husband's "entire family is in the United States." The AAO notes that counsel provided documents establishing that four of the applicant's and her husband's children are lawful permanent residents of the United States.[1] In an affidavit dated July 14, 2008, the applicant states her "only wish is to remain in the United States with [her] family for the remainder of [her] life." Counsel states the applicant's husband "has strong ties to the United States," he "is well-known in the Liberian community," and he "teaches Sunday school." The AAO notes the applicant's husband's concerns regarding relocating to Liberia.

The AAO acknowledges that the applicant's husband has been residing in the United States for many years and that he may experience some hardship in relocating to Liberia. Based on the applicant's husband's longtime residence in the United States, his family and community ties in the United States, his separation from his children in the United States, his medical conditions, and the lack of adequate medical care in Liberia, the AAO finds that the applicant's husband would suffer extreme hardship if he were to join the applicant in Liberia.

However, the record does not establish extreme hardship to the applicant's husband if he remains in the United States. Counsel claims that the applicant's husband's medical condition and the significant financial impact the applicant's husband will suffer indicate that the applicant's husband will suffer extreme hardship if he remains in the United States. As noted above, the applicant's husband has left eye blindness, hypertension and cardiomegaly. Counsel claims that without the applicant, her husband's "health problems would only escalate." The applicant's husband states he would worry about the applicant in Liberia, "this will not be good for [his] blood pressure," and he "cannot imagine living without [the applicant]." He claims that his current high blood pressure and eye blindness was caused by worrying about his children in Liberia. He states he "cannot eat certain food, and [the applicant] is the only person who knows what kinds of food [he] can tolerate." The AAO notes that no medical documentation has been submitted establishing that the applicant's husband is on a restricted diet. However, the AAO notes the applicant's husband's emotional and medical concerns.

Counsel states the applicant and her husband have many debts, including expenses related to her husband's business, court judgments, rent, household bills, and car expenses. The AAO notes that the

[1] The AAO notes that there are no residency documents for the applicant's remaining three children; [redacted] and [redacted] Additionally, the record does not contain birth certificates for Trinity and Varney.

record establishes that the applicant's and her husband's house was foreclosed upon, and her husband has a civil judgment against him for $4,294.55. The applicant's husband states the applicant just started a second job to help with the household expenses. He claims that "[b]etween [his] income and [the applicant's] income, [they] are barely breaking even," the applicant "makes more money than [him]," and he would go further into debt without the applicant's financial assistance. Counsel claims that without the applicant's financial assistance, her husband would have to pay the judgments on his own. Counsel states that the applicant works with her husband, "permitting him to not have to hire another person with him, thereby permitting him to save money." The applicant's husband states the applicant "also helps with the books of [his] business." Counsel states that if the applicant "was not working for [her husband], [he] would have to hire an employee to assist in cleaning and/or hire an employee to do the books for the organization." Counsel claims that the applicant's husband "would not be able to make a living with his business in the event that [the applicant] is deemed inadmissible." The AAO notes the applicant's husband's financial concerns.

The AAO notes the medical conditions of the applicant's husband; however, no documentation was submitted establishing that the applicant's husband requires the applicant's presence or assistance, or that there is no one who can help care for him in the United States. 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)). The AAO notes that the applicant states all of her children reside in the United States. Additionally, the applicant has not distinguished her husband's emotional hardship due to family separation from that which is commonly experienced when spouses reside apart as a result of inadmissibility. The AAO finds the record to include some documentation of the applicant's and her husband's income and expenses; however, this material offers insufficient proof that the applicant's husband would be unable to support himself in the applicant's absence. The AAO notes that financial documentation in the record establishes that the applicant's husband will encounter some economic challenges upon the applicant's departure. However, the applicant has not distinguished her husband's financial challenges from those commonly experienced when a spouse remains in the United States alone. Additionally, the AAO notes that the applicant indicates that her seven children reside in the United States, ranging in age from approximately 40 years old to twenty-two years old, and the record does not establish that her children cannot help her husband with his business. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband will suffer extreme hardship if her waiver application is denied and he 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 husband 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 she merits a waiver as a matter of discretion.

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. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.