U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

PUBLIC COPY

U.S. Citizenship and Immigration Services

[redacted]

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DATE: FEB 23 2012 OFFICE: ACCRA, GHANA FILE: [redacted]

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Michael Hunnicutt

for Perry Rhew, Chief
Administrative Appeals Office

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

The applicant, a native and citizen of Sierra Leone, was found inadmissible under INA § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresentation due to her attempted procurement of a visa by willfully misrepresenting a material fact. The applicant is the beneficiary of an approved Petition for Alien Relative filed by her U.S. citizen husband. The applicant seeks a waiver of inadmissibility pursuant to INA § 212(i), 8 U.S.C. § 1182(i) based on extreme hardship to her husband.

On October 2, 2009, the Field Office Director concluded, based on the evidence provided, that the hardship that the applicant's U.S. citizen spouse would suffer did not rise to the level of extreme as required by the statute.

On appeal, the applicant states that her U.S. citizen husband will suffer extreme hardship if she is not admitted to the United States and provides additional statements from herself and her husband to support her claim.

In support of the waiver application, the record includes, but is not limited to, letters from the applicant, a letter from the applicant's U.S. citizen spouse, biographical information for the applicant and her spouse, and documentation of the applicant's immigration history.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal. The AAO will first address the question of whether the applicant is admissible to the United States.

The Field Office Director determined that the applicant was inadmissible under INA § 212(a)(6)(C), which provides, in pertinent part:

> (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.
> ...

A misrepresentation is generally material only if by making it the alien received a benefit for which she would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* 495 U.S. at

771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or

2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

Matter of S- and B-C-, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961).

The U.S. Department of State determined that the applicant presented false information in connection with a previous visa application. More specifically, the applicant admits to having attempted to obtain a visa in 2005 as the daughter of her sister's husband. The applicant states that she was being supported by her sister and her sister's husband, but she was not her sister's husband's biological daughter, as confirmed by DNA testing. The applicant did not present any documentation that she had been legally adopted by her sister's husband and was refused the visa. As the fraudulent identification documentation submitted by the applicant in connection with her 2005 visa application was directly relevant to the applicant's eligibility for the visa, the misrepresentation was material. As such, the AAO finds that the applicant is inadmissible under INA § 212(a)(6)(C)(i) for a willful misrepresentation of a material fact. The applicant does not appear to contest her inadmissibility on appeal.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states 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 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 in this case is the applicant's U.S. citizen husband. Hardship to the applicant or her child is not directly relevant under the statute and will be considered only insofar as it results in hardship to the applicant's spouse. 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).

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).

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 qualifying relative is the applicant's U.S. citizen husband. The applicant's spouse states that he will suffer emotional and psychiatric problems if his wife is not permitted to join him in the United States. The applicant's spouse states that he is deeply concerned for his wife's and his son's well-being and that his inability to make good on his promise to his wife and his duty to be a father to his son would cause him to suffer from psychiatric problems. Aside from these statements, however, the applicant did not provide any evidence to illustrate that the emotional hardship that her husband would experience would be beyond what is normally experienced by individuals separated from a qualifying family member due to immigration inadmissibility. The applicant's spouse also states that his financial situation would improve if the applicant is able to join him in the United States. The applicant's spouse, however, did not provide any evidence of his current financial situation, such as evidence of his assets, expenses and income. Without further documentation, it is not to possible conclude that the applicant's inability to help her spouse financially is causing him any hardship. Although the AAO recognizes the significance of family separation as a hardship factor, and recognizes that the applicant's spouse is suffering hardship due to her inadmissibility, the applicant has not met her burden of proof to document that the hardship her U.S. citizen spouse faces if she is not admitted to the United States is extreme in nature.

We must also consider whether the applicant's U.S. citizen spouse would suffer extreme hardship should he relocate to reside with the applicant in Senegal, where the applicant resided at the time of this application, or Sierra Leone, where the applicant and the applicant's spouse are citizens. The applicant's spouse states that he would suffer medical hardship if he should have to depart the United States and find new doctors and new facilities to treat his "condition," but he does not state what condition he suffers from or provide any evidence that he is being treated for any condition in the United States. The applicant's spouse also states that he would suffer emotional hardship if he should have to leave the United States and be separated from his mother, two brothers, and grandmother, who he states live in the United States. No evidence is provided, however, to document that the applicant's spouse's family members reside in the United States or to document the importance of the applicant's spouse's relationship to those individuals. In regards to the financial hardship that the applicant's spouse claims he will suffer if he can no longer maintain his current income, he does not provide any evidence of his claimed student loan debt or his inability to obtain work in Senegal or Sierra Leone to cover his expeneses. Even were the AAO to take administrative note of the economic conditions in Senegal and Sierra Leone, it not possible to make a conclusion from the evidence in the record that those conditions would cause hardship to the applicant's spouse. Again, there is no evidence in the record of the applicant's spouse's assets and expenses in the United States and what they would be by comparison in Senegal or Sierra Leone. The applicant's spouse also states that he presently supports his wife and child financially and would not be able to do so abroad, but he did not provide any evidence of the financial support that he sends to the applicant. Lastly, the applicant's spouse states that it would be very

difficult for him to pursue an advanced degree if he were to relocate abroad, but the fact that the qualifying relative's economic and educational opportunities may be better in the United States than in the country of relocation does not itself constitute extreme hardship. *See Matter of Ige,* 20 I&N at 882. When considered in the aggregate, the record does not demonstrate extreme hardship to the applicant's spouse if he were to relocate abroad to reside with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her qualifying relative as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining 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. 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.