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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

[redacted]

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Date: MAY 23 2012 Office: COLUMBUS 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Columbus, Ohio. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the waiver application will be approved.

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured a visa and admission to the United States through fraud or misrepresentation. The applicant is married to a U.S. citizen and is the beneficiary of a Petition for Alien Relative (Form I-130). He seeks a waiver pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his wife.

The field office director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of the Field Office Director,* January 19, 2010.

On appeal, counsel for the applicant asserts that USCIS erred and abused its discretion in finding that the applicant had not met his burden of showing undue hardship to a qualifying relative.

The record on appeal contains the applicant's Application for Waiver of Grounds of Inadmissibility (Form I-601) and a legal brief with supporting documentation including, but not limited to: a psychological evaluation; financial information, including tax returns and W-2 forms; his wife's statement; employment letters; marriage, birth, and naturalization certificates; expense receipts, including mortgage information; a child's developmental assessment; photographs; and information about [redacted] The record also contains a Notice of Appeal (Form I-290B), an approved Petition for Alien Relative (Form I-130), and supporting documents. The entire record was reviewed and considered in rendering this decision.

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

> 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)(1) of the Act provides:

> The [Secretary] may, in the discretion of the [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 [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 includes the U.S. citizen or

lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen spouse 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).

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.

The applicant's qualifying relative in this case is his U.S. citizen wife. The record shows the applicant entered the United States on December 12, 2000 using a Guinean passport and U.S. visa belonging to another person, and has not departed.

The applicant's wife contends she will suffer emotional and financial hardship if she remains in the United States while the applicant resides abroad due to his inadmissibility. She claims to be anxious and depressed by thoughts of possible separation from the applicant, to whom she has been married for over seven years and with whom she has three children ranging from two to seven years old. Citing their shared experience of surviving Sierra Leone's civil war, she and the applicant note the strong commitment they have to each other and family bond they share.

The applicant's wife states separation from her husband will represent loss of the emotional and psychological support, love, and companionship of someone with whom she shares a common past, as well as current parenting responsibilities, and the applicant expresses similar sentiments. She reports being subjected to female genital mutilation (FGM) at the age of five, and a doctor's note confirms she underwent this procedure. She asserts that the prospect of loss is made more painful by the many atrocities and deaths she experienced in her home country, coupled with the fact of having no extended family supporting her in this country. A psychological evaluation confirms the applicant's wife's claims of emotional fragility stemming from many causes, including her parents' divorce when she was young, abuse by custodial relatives during childhood, seeing much wartime violence and killing, and estrangement from the father with whom she emigrated. The psychologist diagnoses her as suffering from chronic Post Traumatic Stress Disorder (PTSD) and Depressive Disorder, and the report concludes that, unless the applicant is able to stay with his wife, the qualifying relative's PTSD and depression will worsen, render her incapable of maintaining a stable home environment, and thereby cause her children to suffer. *See Psychological Evaluation*, December 6, 2009. The applicant's wife herself reports being fearful she could not survive emotionally without the applicant.

As for the predicted financial hardship, there is evidence that removal of the applicant's contribution will eliminate two-thirds of the couple's joint income. In 2006, the applicant earned over twice what his wife earned. Since giving birth in 2009, she reports working fewer hours in order to spend more time at home with the children, during which time the applicant worked extra shifts to compensate for his wife's diminished contribution. The record shows the couple already using daycare, but

suggests that the childcare costs of three children -- necessary for the qualifying relative to resume working fulltime to replace the applicant's income -- would impose a greater burden on her resources. Among other claimed expenses are a mortgage payment[1] and utility bills, which are documented, and other common household expenses. The applicant provides evidence that, in addition to personal safety issues that would accompany his return to Sierra Leone, his financial prospects there would be poor: not only does government corruption burden job seekers, but minimum wage was less than $10 per month in 2009, as compared to the applicant's $10 per hour U.S. wage rate. The record suggests that, as the applicant lacks education and country connections, his wife may have to support him should he be unable to find a job, due to the lack of employment opportunities. Therefore, her claim regarding financial burden is well supported.

The evidence on the record, when considered in the aggregate, establishes that the emotional and financial hardship the applicant's wife would experience if she were to remain in the United States without the applicant would rise to the level of extreme.

The applicant also demonstrated that his qualifying relative would suffer extreme hardship in the event that she relocated to Sierra Leone with the applicant. The record shows she fled to the United States in 2001 at the age of 21 and naturalized five years later. Besides seeing the atrocities of war, she experienced FGM and abuse at the hands of relatives. For these reasons, the psychological evaluation states that, as a way of coping with her mental health issues, the applicant's wife has focused her attention on creating a safe, stable home in the United States for her husband and children. The record supports her claim that nothing remains for her in Sierra Leone: she has never returned and states she "cannot imagine taking my children back ... so that they can be persecuted and live the horrors that I still think about today." *Statement of Mabinty Faal,* December 9, 2009. Faced with moving back should her husband have to leave, she expresses a number of specific concerns for her family: unavailability of learning support for her developmentally disabled son; that her daughters would be subjected to FGM; and that the children would be punished for their father's actions during the civil war. Record evidence supports these concerns about Sierra Leone, where education is not free and FGM still routinely practiced. U.S. government sources confirm these fears:

> Major human rights problems included[:...] interference with freedom of speech and press; forcible dispersion of demonstrators; widespread official corruption; societal discrimination and violence against women, discrimination based on sexual orientation; female genital mutilation (FGM); child abuse; trafficking in persons, including children; and forced and child labor.

2010 Human Rights Report: Sierra Leone, U.S. Department of State, April 8, 2011.

This evidence also supports the applicant's contention that his wife, a registered nurse, would be unlikely to obtain employment in her profession or in any other job.

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[1] The AAO notes that, as the applicant relocated to Maryland in 2011, it is uncertain whether the mortgage obligation on the family's Ohio home is ongoing.

As documentation supports these claims, the record reflects that the cumulative effect of the applicant's wife's ties to her adopted land, childhood trauma in her native country, and absence of ties elsewhere, her 11-year residence in the United States, her health and safety concerns, and her loss of employment, were she to relocate, rises to the level of extreme. She will be fearful for her family's physical safety, her financial well-being, and her daughters being subjected to FGM, a practice condemned by the U.S. government but still permitted by the Sierra Leone government. The AAO thus concludes that, were the applicant unable to reside in the United States due to his inadmissibility, a qualifying relative would suffer extreme hardship were she to relocate abroad to Sierra Leone to continue residing with the applicant.

Review of the documentation in the record, when considered in its totality, reflects that the applicant has established that his U.S. citizen spouse would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996).

The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant and his U.S. citizen wife and children would face if the applicant were to reside in Sierra Leone, regardless of whether they accompanied the applicant or remained in the United States; the applicant's lack of a criminal record; support letters from friends; gainful employment in the United States; payment of taxes; and the passage of more than 11 years since the applicant's unlawful entry into the United States. The unfavorable factors in this matter are the applicant's procurement of a visa and U.S. admission by fraud, and his unlawful presence and employment here.

Although the applicant's violations of the immigration laws cannot be condoned, the positive factors in this case outweigh the negative factors. Given the passage of time since the applicant's violations of immigration law, the AAO finds that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. The applicant has sustained that burden. Accordingly, this appeal will be sustained and the application approved.

ORDER: The appeal is sustained. The waiver application is approved.