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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

[redacted]

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DATE: SEP 28 2012 Office: WASHINGTON FIELD OFFICE 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Washington Field Office, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a 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). He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on July 15, 2011.

On appeal, counsel for the applicant asserts that the Field Office Director failed to properly weigh the submitted evidence, failed to consider the hardship impacts on the applicant's spouse in the aggregate and that the evidence which has been submitted is sufficient to establish extreme hardship. *Form I-290B, received August 19, 2011.*

The record contains, but is not limited to, the following documentation: statements from the applicant; copies of bank statements, tax returns and employment letters for the applicant and his spouse; statements from friends and associates of the applicant and his spouse; copies of car bills, utility bills and other financial records; *A Diagnostic Mental Health Assessment from* [redacted] dated January 15, 2009; country conditions materials on Sierra Leone, including a CIA World Factbook cite and a State Department report on human rights; copies of handwritten receipts for various expenses; copies of photographs of the applicant and her spouse. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

> (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 chapter is inadmissible.

The record indicates that the applicant presented a fraudulent passport with a false name, birth date and nationality when entering the United States on September 17, 2003. Thus, the applicant entered the United States by misrepresenting a material fact, to wit, his identity and authority to enter the United States, and is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding on appeal.

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

> (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 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.

Counsel for the applicant submitted a 14 page brief on appeal, but failed to submit any additional evidence. Counsel for the applicant asserts on appeal that the record contains sufficient documentation to establish the applicant's spouse will experience extreme hardship. *Brief in Support of Appeal*, dated September 15, 2011.

Counsel asserts on appeal that the applicant would experience physical, emotional and financial hardship upon relocation. *Statement in Support of Appeal*, received September 15, 2011. Counsel asserts that the applicant's spouse would not be able to find adequate employment, would suffer physical hardship because of the high rate of poverty and disease in Seirra Leone, and that the applicant's daughter would be subject to Female Genital Mutilation (FGM) if she relocated to Sierra Leone.

The applicant's spouse has also submitted a letter which outlines the physical and economic impacts she would experience upon relocation to Sierra Leone.

As noted above, hardships to an applicant's child are only relevant to the extent that they impact the qualifying relative, in this case the applicant's spouse. The country conditions materials submitted into the record do not indicate that Female Genital Mutilation still practiced in parts of Sierra Leone

is so universally imposed that it would be beyond the applicant or his spouse's ability to avoid the procedure for their daughter. There is little actual evidence that she would be forced to under go the procedure, and as such, the AAO does not find counsel's assertion to be supported by the record.

Counsel asserts that USCIS failed to contest any of the facts contained in the CIA world Factbook excerpt submitted on appeal, however, the AAO notes that the burden of proof in this proceeding rests with the applicant. The CIA World Factbook discusses general information and statistics about a country, and are not specifically related to any particular individual. The AAO takes note, however, of the most recent Country Specific Information published by the U.S. State Department's Bureau of Consular Affairs, as well as other State Department materials, which corroborate counsel's assertions of the country conditions in Sierra Leone.

The country conditions materials submitted are sufficient to establish that Sierra Leone has a lower quality of life than the United States. The country condition materials also indicate that Sierra Leone has struggled to develop its infrastructure, endured a recent civil war, has a high unemployment rate and is still struggling with high crime rates and lack of medical facilities. Based on the evidence submitted, the AAO can determine that the applicant's spouse may experience some physical hardship due to relocation, and will give this factor consideration when aggregating the impacts on the applicant's spouse.

While children are not qualifying relatives in this proceeding, hardship impacts on them may be considered when they indirectly impact the qualifying relative, in this case the applicant's spouse. Based on the country conditions in Sierra Leone, the AAO can determine that having to relocate his 14 year old daughter to Sierra Leone would result in additional hardship on the applicant's spouse.

The AAO finds that, based on the country conditions in Sierra Leone, the physical impact of having to relocate a 14 year old daughter to Sierra Leone and having to separate from the United States community ties such as employment and property ownership, the applicant's spouse would experience uncommon hardships rising to the level of extreme hardship upon relocation.

With regard to hardship upon separation, counsel for the applicant asserts the applicant's spouse will experience extreme emotional and financial hardship due to the applicant's inadmissibility. *Statement in Support of Appeal*, received September 15, 2011. Counsel asserts that the applicant's spouse is unable to meet her financial obligations and that the evidence in the record is sufficient to establish she will experience extreme emotional hardship.

With regard to the financial impact upon departure, the applicant's spouse has submitted a letter discussing her income and financial obligations. The applicant's spouse states that she and the applicant pay $1,610 dollars in rent. The record contains two hand-written receipts allegedly related to rent payments. The record contains a typed letter from a previous submission from a landlord which states that the applicant and her spouse resided at their prior address from May 2006 through April of 2009 at a rate of $510 a month. There is no additional documentation to corroborate their

current rent, such as copies of leases, cashed checks or other verification that their current rent is actually $1,610 and that they are responsible for paying this rent.

The record also contains copies of utilities invoices and billings, however, most of this documentation precedes their current place of residence, so it is unclear what evidence in the record is relevant based on their current residence. Based on what the applicant has submitted, their monthly utilities are paid to someone else.

A further examination reveals sufficient evidence to demonstrate that the applicant and her spouse have a number of financial obligations, and that currently they both work to cover their expenses. However, the record does not indicate that the applicant's spouse has accrued any debt, is in danger of losing her place of residence or that she is unable to meet her financial obligations. While the record indicates the applicant's spouse may currently depend on the income the applicant earns, it does not demonstrate that she would be unable to rearrange her finances in some manner to mitigate the financial impacts of the applicant's departure. When the evidence of financial hardship is considered in the totality, it is unclear that the applicant's spouse would be unable to rearrange her financial commitments in order to mitigate the impacts of the applicant's departure or that she would be unable to meet her financial obligations. The record does not fully demonstrate the degree or extent of the applicant's spouse's financial hardship, and as such it cannot be distinguished from the financial impact which commonly affects the relatives of inadmissible aliens who remain in the United States.

The applicant's spouse has asserted that both she and her daughter are experiencing emotional hardship due to the applicant's inadmissibility. While children are not qualifying relatives in this proceeding, the AAO will consider the emotional impact on the applicant's spouse due to the impacts on her daughter. The record also contains a psychological assessment of the applicant's spouse. The evaluation recounts the applicant's spouse's assertions regarding the emotional impacts on her, and concludes that she will experience Adjustment Disorder with Anxiety and Depressed Mood. Based on these observations the AAO will give emotional hardship consideration as a factor when aggregating the impacts on the applicant's spouse due to separation.

The AAO acknowledges that the applicant's spouse will experience emotional hardship if he remains in the United States without the applicant, but the applicant has failed to demonstrate that this hardship, even when combined with other hardship factors upon separation, will be extreme.
We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme

hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) in this case.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.