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U.S. Citizenship
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FILE: [REDACTED] Office: PHILADELPHIA, PA

Date: APR 22 2008

IN RE: [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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Sierra Leone who was found to be inadmissible to the United States under 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 admission into the United States by fraud or willful misrepresentation in 1994. The applicant is married to a U.S. citizen and is the father of a lawful permanent resident. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i) to remain in the United States with his family.

The district director concluded that the record did not establish that a qualifying relative would suffer extreme hardship if the applicant were removed from the United States. He denied the application accordingly. *Decision of the District Director*, dated November 21, 2005.

On appeal, counsel states that the applicant's spouse, [REDACTED], will suffer extreme hardship if the applicant is returned to Sierra Leone. Counsel asserts that [REDACTED]'s family ties are to the United States and that relocating to Sierra Leone, a nation devastated by civil war, will also have an adverse financial impact on her. Counsel further contends that the applicant's son will suffer financial hardship if the applicant is removed. *Form I-290B, Notice of Appeal to the Administrative Appeals Office*, dated December 19, 2005; *Counsel's brief*, dated December 19, 2005.

The record indicates that on January 19, 2000, the applicant filed the Form I-485, Application to Register Permanent Residence or Adjust Status, based on the Form I-130, Petition for Alien Relative, filed by Ms. [REDACTED]. At his adjustment interview, the applicant testified under oath that he had entered the United States in 1994 by presenting a passport belonging to his brother, a Canadian citizen. Accordingly, the applicant is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or willful misrepresentation.

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

- (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.

Section 212(i) of the Act provides 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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Counsel's brief indicates that he believes that [REDACTED] and the applicant's son are both qualifying relatives in this matter. However, as noted above, the term qualifying relative in a 212(i) waiver proceeding is limited to the spouse or parent of the applicant. Accordingly, the only qualifying relative in this proceeding is [REDACTED] and any hardship experienced by the applicant or his son as a result of separation will not be considered, except as it affects [REDACTED]. Should extreme hardship be established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). In examining whether extreme hardship has been established, the BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

The record includes the following evidence in support of the applicant's claim that [REDACTED] would suffer extreme hardship if he were to be removed from the United States: counsel's brief; statements from the applicant and [REDACTED]; and medical evidence concerning the applicant's heart condition.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to his spouse in the event that she relocates to Sierra Leone. In her December 15, 2005 statement, [REDACTED] asserts that if the applicant were removed from the United States, she would have to travel with him because of his heart condition. She reports that the applicant suffered a heart attack in 2004, which nearly took his life, and that he remains on medication. Ms. [REDACTED] states that if the applicant returns to Sierra Leone, a country ravaged by war and without electricity, clean water or health facilities, the applicant might not be able to get his medication. Were he to suffer a heart attack in Sierra Leone, [REDACTED] contends, he would die. In his September 30, 2005 statement, the applicant also points to his 2004 heart attack and his need for medication, which, he contends, he could not afford in Sierra Leone.

Counsel states that [REDACTED] has been born and raised in the United States, has never visited Sierra Leone or any country in Africa and that her family ties are in the United States. He also notes the devastation created in Sierra Leone as a result of the 1991-2002 civil war, and the resulting high rate of unemployment and its effect on the security of lives and property. He contends that it will take more than a decade to rebuild the country's infrastructure, including roads, health care facilities, and electricity and public water supplies. Counsel, too, notes the applicant's heart attack and his reliance on medication.

While the AAO notes the statements made by [REDACTED], the applicant and counsel regarding the applicant's heart attack and his need for continued medication, it does not find this evidence to satisfy the requirements of section 212(i) of the Act. As previously noted, the hardship experienced by an applicant upon removal is not considered in 212(i) waiver proceedings, except as it affects that applicant's qualifying relative. In the present matter, the record offers no evidence as to how the applicant's heart condition would affect Ms. [REDACTED] were she to relocate to Sierra Leone. The first page of a November 7, 2005 letter written by a physician at the Kelly Cardiovascular Group refers to the applicant's heart attack, but indicates that a subsequent complaint of chest pain has been resolved and his symptoms appear to be stable. As this document fails to offer evidence related to the potential health risks, if any, to the applicant of a move to Sierra Leone or to indicate what requirements such health risks might impose on [REDACTED], it fails to establish how or to what extent [REDACTED] would be affected by the applicant's medical condition in the event of her relocation. No other medical documentation is included in the record.

The AAO also notes counsel's claims regarding the lack of security and high unemployment rates in Sierra Leone. Counsel fails, however, to discuss such negative factors in relation to their impact on [REDACTED]. Moreover, the record offers no documentary evidence in support of the country conditions described by counsel. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The applicant's claim that he would be unable to pay for his medication in Sierra Leone is also unsupported by documentary evidence. 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)).

Having considered the evidence of record as it relates to the impact of relocation to Sierra Leone on Ms. [REDACTED] the AAO finds that the applicant has failed to demonstrate that [REDACTED] would experience

extreme hardship as a result of such a move. The claims of hardship in the record focus, in large part, on the applicant who is not a qualifying relative in this proceeding. Those that are related to [REDACTED] are not supported by the record.

The second part of the analysis requires the applicant to establish extreme hardship in the event that Ms. [REDACTED] remains in the United States following his removal. In her statement, [REDACTED] asserts that she has been married to the applicant for eight years and that he is one of the finest men she has ever met. Ms. [REDACTED] asserts that she, her daughter and the applicant's son are all dependent on the applicant and that without him things would be very difficult. The applicant contends that he and [REDACTED] rely heavily on each other for financial and emotional support.

While [REDACTED] contends that the applicant works to support his family and that without him things would be difficult, the record fails to provide the documentary evidence necessary to demonstrate the financial impact of the applicant's removal on [REDACTED]. In her December 15, 2005 statement, [REDACTED] states that her daughter is in college, as is the applicant's son. Beyond this unsupported statement, the record offers no indication of the financial responsibilities that might fall upon [REDACTED] in the applicant's absence. It demonstrates only that [REDACTED] is employed as a teacher by the Philadelphia public school system and, in 1999, earned \$37,789 from this employment. *Form I-864, Affidavit of Support Under Section 213 of the Act*. The record also fails to establish that country conditions in Sierra Leone would prevent the applicant from obtaining employment and assisting [REDACTED] in meeting her financial obligations in his absence. The AAO notes further that the record contains no documentation that demonstrates the emotional impact of the applicant's removal on [REDACTED]. Going on record without supporting documentary evidence is not sufficient to meet the applicant's burden of proof in this proceeding. *Matter of Soffici, supra*.

When reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors cited above, the record does not support a finding that [REDACTED] would face extreme hardship if the applicant were removed and she remained in the United States. Rather, the record demonstrates that she would experience the distress and difficulties normally associated with the removal of a spouse. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection, and emotional and social interdependence. While separation nearly always results in considerable hardship to the individuals and families involved, the Congress, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," did not intend that a waiver be granted in every case where a qualifying relationship and, thus, familial and emotional bonds exist. The point made in this and prior AAO decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's removal from 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(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.