

PUBLIC COPY

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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



**U.S. Citizenship
and Immigration
Services**

H/3

FILE:

Office: ACCRA

Date:

APR 06 2009

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. 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 \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana. The applicant filed a motion to reopen the proceedings. The field office director granted the motion, reassessed the matter, and again denied the application. 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 pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure. The applicant seeks a waiver of inadmissibility in order to enter the United States and reside with her U.S. citizen husband.

The field office director found that the applicant failed to establish extreme hardship to her U.S. citizen husband and denied the Form I-601 application for a waiver accordingly. *Decision of the Field Office Director*, dated September 11, 2008.

On appeal, the applicant submits additional documentation to be considered, including an evaluation of her family by a licensed clinical social worker and medical documentation for her son.

The record contains a statement from counsel; an evaluation of the applicant's family by a licensed clinical social worker; medical documentation for the applicant's son; a copy of the applicant's son's birth certificate; reports on conditions in Sierra Leone and Senegal; banking, financial, and tax documents for the applicant and her husband; statements from the applicant's pastor and other acquaintances; a statement from the applicant; a copy of the applicant's husband's passport; a statement from the applicant's husband; a copy of the applicant's husband's naturalization certificate; a copy of the applicant's marriage certificate, and; a copy of the applicant's passport. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The record reflects that the applicant entered the United States without inspection on or about November 17, 1996. She applied for Temporary Protected Status (TPS) on January 15, 1998, which was approved on February 20, 1998. The applicant's TPS status expired on May 3, 2004. The applicant's husband filed a Form I-130 relative petition on her behalf on May 5, 2004, which was approved on August 22, 2005. The applicant departed the United States on June 5, 2007. Accordingly, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until January 15, 1998, the date she filed a bona fide application for TPS status. This period totals approximately nine months. The applicant began accruing unlawful presence again once her TPS status expired, on May 3, 2004. Thus, she accrued approximately three additional years of unlawful presence until her departure on June 5, 2007. She sought a visa to reenter the United States as an immigrant, thus she was deemed inadmissible to the United States under section 212(a)(9)(B)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure. The applicant does not contest her inadmissibility on appeal.

A section 212(a)(9)(B)(v) waiver of the bar to admission resulting from section 212(a)(9)(B)(i)(II) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant experiences upon being found inadmissible is not a basis for a waiver under section 212(a)(9)(B)(v) of the Act. Once extreme hardship is 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

On appeal, the applicant submits additional documentation to be considered, including an evaluation of her family by [REDACTED] a licensed clinical social worker. [REDACTED] stated that the applicant provides essential and irreplaceable physical, emotional, and instrumental care for her husband.

Report from [REDACTED] undated. [REDACTED] provides that the applicant's husband resides with his adult son, two grandchildren, and stepdaughter. *Id.* at 4. [REDACTED] indicated that the applicant's husband has lived in New York for 20 years, and that his relatives in the United States would be alone if he relocates to Africa. *Id.* [REDACTED] contends that the applicant's husband's younger son will suffer poor healthcare, education, social, medical, family, and related losses if he cannot return to the United States with the applicant. *Id.* [REDACTED] further stated that the applicant's husband would suffer extreme loss if he is separated from the applicant. *Id.*

[REDACTED] recounted statements made by the 28-year-old son of the applicant's husband, who stated that the applicant's husband is experiencing emotional and economic hardship due to the applicant's absence. *Id.* at 12. [REDACTED] recounted statements from the applicant's 19-year-old daughter, who provided that the applicant's husband has "not been accommodating" and thus she requires the applicant's presence to help care for her. *Id.* at 14. [REDACTED] stated that the applicant's husband reported feelings of loneliness, sleep disturbances, health consequences, and financial difficulty due to separation from the applicant. *Id.* at 18.

The applicant stated that her U.S. citizen son is residing with her in Senegal, and that he is missing the educational and medical benefits of residence in the United States. *Statement from the Applicant*, dated June 10, 2008. She asserted that her husband's income may not be sufficient to sustain the family's needs, including providing for her and her son in Senegal. *Id.* at 2.

The applicant's husband stated that he would be unable to find adequate employment to support his family should he relocate to Sierra Leone.¹ *Statement from the Applicant's Husband*, dated October 11, 2007. He explained that he has been a contractor with the same company since 1998, and that wages are very low in Sierra Leone. *Id.* at 1. He cited poor conditions in Sierra Leone. *Id.* at 1-2.

Upon review, the applicant has not established that her husband will suffer extreme hardship if she is prohibited from entering the United States. The AAO has carefully examined the report from [REDACTED]. While the report is helpful for a background of the applicant and her family, it does not represent an ongoing relationship with a mental health professional, or treatment for a mental health condition. [REDACTED] indicated that he generated his report based on a single interview with the applicant's family, which limits its evidentiary weight. While the report identifies emotional and economic hardships to the applicant's husband, it does not reflect that the applicant's husband is experiencing consequences that are distinguishable from those commonly experienced by an individual whose spouse is deemed inadmissible.

U.S. court decisions have 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

¹ Although the applicant is residing in Senegal, she is a native and citizen of Sierra Leone.

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 applicant's husband reports having economic difficulty due to the applicant's absence. Yet, the record does not contain complete explanation or documentation of the applicant's husband's economic situation. The applicant submitted documentation of her husband's household's regular expenses, including a significant mortgage payment of approximately \$1,770 per month. Provided tax records reflect that she and her husband earned income of approximately \$31,290 in 2007. Yet, the record does not show whether the applicant worked, such that she contributed to the household's earnings. Therefore, the AAO cannot determine if the applicant's presence in the United States would result in additional income for her husband. Nor can the AAO determine that the applicant's presence in the United States would require less economic resources than her current residence in Senegal, such that her husband would have a reduced financial burden should she return to the United States. It is also noted that the applicant's husband's adult son resides with him. The applicant has not indicated whether her son-in-law works or contributes to the household's financial needs. Thus, the AAO cannot find that all of the documented expenses are solely the applicant's husband's responsibility. The applicant has not stated or shown that she is unable to work in Senegal to help meet her and her son's needs. Accordingly, the applicant has not shown by a preponderance of the evidence that her husband would experience significant economic strain due to her absence from the United States.

The record does not show that the applicant's husband presently has childcare responsibilities. His adult son resides with him, and presumably has responsibility for his own children. The applicant's young son resides with her in Senegal. The applicant's adult daughter noted that the applicant's husband has "not been accommodating," thus it appears that the applicant's husband does not provide care for her.

The applicant's husband reasonably has concern for the applicant's and his son's well-being in Senegal, as conditions there are challenging, and his son is unable to avail himself of educational and medical care benefits in the United States. Yet, the applicant has not asserted or shown that her son has needs that cannot be met in Senegal, such that her husband would have unusual concerns.

Based on the foregoing, the applicant has not shown by a preponderance of the evidence that her husband will experience extreme hardship should she be prohibited from entering the United States and he remain without her.

The applicant has presented reports on conditions in Senegal and Sierra Leone, which reflects that her husband would encounter significant challenges should he relocate to either country. The AAO acknowledges that the applicant's husband has resided in the United States for a lengthy period, and that he has business, property, and family connections here. Yet, the record also reflects that the applicant's husband is a native of Sierra Leone, which suggests that he would not be faced with language or cultural issues should he return there. It is evident that the applicant's husband would

endure significant emotional and economic consequences should he uproot his life in the United States and return to Africa.

In order for the applicant to establish eligibility for consideration for a waiver, she must show that denial of the waiver application “would result in extreme hardship” to a qualifying relative. Section 212(a)(9)(B)(v) of the Act. All instances of hardship to the applicant’s husband have been considered separately and in aggregate. While the applicant has shown that her husband would face significant hardship should he relocate to Africa, she has not shown by a preponderance of the evidence that he would experience extreme hardship should he remain in the United States. Thus, the applicant has not shown that her husband will experience extreme hardship should she be prohibited from entering the United States at this time. Section 212(a)(9)(B)(v) of the Act. 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(a)(9)(B) 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.