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

U.S. Citizenship and Immigration Services

[redacted]

H5

FILE: [redacted] Office: SEATTLE, WA Date: APR 2 3 2010

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:

[redacted]

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.

Michael Rhew

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION**: The waiver application was denied by the Field Office Director, Seattle, Washington and the matter is now before the AAO on appeal. The Field Office Director's decision will be withdrawn and the matter remanded to the Field Office Director for the issuance of a new decision once issues regarding the applicant's identity and/or nationality have been resolved.

The applicant 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 entered the United States through fraud or willful misrepresentation. The applicant's spouse is a U.S. citizen, and he seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated October 7, 2009.

On appeal, counsel asserts that United States Citizenship and Immigration Services (USCIS) incorrectly applied Board of Immigration Appeals (BIA) precedent decisions, did not properly consider the evidence that establishes the hardship that the applicant's spouse would experience in Sierra Leone and reached conclusions not supported by the record. *Form I-290B*, filed November 6, 2009.

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)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, the U.S. citizen or lawful permanent resident spouse and/or parent of the applicant. The AAO notes that extreme hardship to a qualifying relative must be

established whether he or she resides in the applicant's home country or in the United States, as the qualifying relative is not required to reside outside the United States based on the denial of the applicant's waiver request. 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).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or United States citizen family ties to 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.

To support the applicant's claim that his spouse will experience extreme hardship if his waiver request is denied, the record includes, but is not limited to, counsel's brief; statements from the applicant, his spouse, and his mother-in-law; statements from friends of the applicant and his spouse; country conditions materials on Sierra Leone; a psychological evaluation of the applicant's spouse; medical records relating to the applicant's spouse; and a fact sheet on the shortage of nurses in the United States. The AAO acknowledges the applicant's submission of these materials but will not proceed with an analysis of his claim to extreme hardship as it finds the record to lack information required to conduct such an analysis.

On May 7, 2002, the applicant filed a Form I-589, Application for Asylum and for Withholding of Removal and was scheduled for an interview on November 1, 2006. The applicant failed to appear for his asylum hearing and, on November 1, 2006, USCIS issued a Form I-862, Notice to Appear (NTA), to the applicant, which charged the applicant with being a native and citizen of Sierra Leone who had been admitted to the United States at New York International Airport without possessing or presenting a valid immigrant visa, reentry permit, border crossing identification card, or other valid entry document required by the Act. The allegations in the Form I-862 were based on information from the applicant's Form I-589, which indicated that the applicant was a native and citizen of Sierra Leone, and that he had used another individual's passport to enter the United States in August 2001.

On March 27, 2009, [redacted] issued a Form I-261, Additional Charges of Inadmissibility/Deportability to the applicant, withdrawing the charge stated in the November 1, 2006 NTA. The Form I-261 now charges that the applicant is subject to removal pursuant to section 212(a)(6)(A)(i) of the Act as an alien "present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General [now Secretary of

Homeland Security]," an exclusion ground for which no waiver is available.[1] In support of the charge, the Form I-261 lists the following factual allegations, which replace those in the original NTA:

2. You are a native and citizen of an unknown foreign nation.
3. That you entered the United States at an unknown time and place.
4. You were not then admitted or paroled after inspection by an immigration officer.

The record indicates that the Form I-261 was issued based on a determination that the Sierra Leonean identity documents provided by the applicant were not valid and the absence of any record verifying the entry claimed by the applicant.

In that the record before the AAO does not reliably identify the applicant's country of citizenship, i.e., the country to which he would likely be removed, a determination cannot be made concerning the impact of relocation on the applicant's spouse. Moreover, the country of relocation would also have a bearing on the hardship experienced by the applicant's spouse if she remained in the United States without the applicant. Accordingly, the record does not allow USCIS to reach a decision regarding the applicant's waiver application. As the Field Office Director's decision relied on this same record, the AAO will withdraw her decision and remand the matter to her for the issuance of a new decision once the applicant's identity/nationality has been resolved.

**ORDER:** The decision of the Field Office Director is withdrawn and the matter is remanded to the Field Office Director for the issuance of a new decision once the applicant's identity/nationality is resolved.

[1] The only relief from a section 212(a)(6)(A)(i) inadmissibility is an exception for certain battered women and children found in section 212(a)(6)(A)(ii) of the Act.