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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

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#5

[Redacted]

FILE:

[Redacted]

Office: PHILADELPHIA, PA

Date:

(consolidated
therein)

MAY 07 2010

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:

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).

Perry Rhew
Chief, Administrative Appeals Office

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

The record reflects that 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 entered the United States by fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a United States citizen and is the father of three United States citizen children. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his wife and children.

The Acting District Director found 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 Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated November 21, 2007.

On appeal, the applicant, through counsel, asserts that United States Citizenship and Immigration Services (USCIS) “failed to acknowledge the extreme poverty a single mother of five (5) children would face” if the applicant were removed from the United States. *Form I-290B*, filed December 18, 2007. Additionally, counsel contends that USCIS “failed to give adequate weight to concerns about the psychological impact on the children of the departure of their father and father-figure.” *Id.*

The record includes, but is not limited to, counsel’s appeal brief, a statement from the applicant’s wife, a psychological evaluation of the applicant’s wife, a 2004 utility bill, a 2005 bank statement, 2003 and 2004 tax information for the applicant’s wife, and country conditions information on Sierra Leone. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

- (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 Act is inadmissible.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

- (i) (1) The Attorney General [now the Secretary of Homeland Security, “Secretary”] may, in the discretion of the [Secretary], 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 [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...

In the present case, the record indicates that, on September 10, 1989, the applicant entered the United States by presenting another individual's passport. On June 9, 2006, the applicant's United States citizen wife filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On February 5, 2007, the applicant filed a Form I-601. On November 16, 2007, the applicant's Form I-130 was approved. On November 21, 2007, the Acting District Director denied the applicant's Form I-485 and Form I-601, finding the applicant had entered the United States by fraud or the willful misrepresentation of a material fact and had failed to demonstrate extreme hardship to a qualifying relative.

Based on the applicant's use of another individual's passport to enter the United States, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

A section 212(i) 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 to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is not directly relevant to a determination of extreme hardship in a section 212(i) waiver proceeding. The AAO also notes that the record contains references to the hardship that the applicant's children¹ would suffer if the applicant were denied admission into the United States. Section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship to his citizen or lawfully resident spouse or parent. Unlike a waiver under section 212(h) of the Act, Congress does not mention extreme hardship to United States citizen or lawful permanent resident children. Therefore, hardship to the applicant's children is not considered in section 212(i) waiver proceedings except to the extent that it creates hardship for a qualifying relative. 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).

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 *Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to

¹ The AAO notes that the record indicates that the applicant has two stepchildren. However, the record contains no documentation, i.e., birth certificates, that establishes that the applicant's spouse has children from a prior relationship. Therefore, the AAO will not address any hardship that might be experienced by the applicant's stepchildren or how such hardship would affect their mother, the only qualifying relative.

determining whether an applicant 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 BIA has also 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. courts have stated, “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *see also Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Only “in cases of great actual or prospective injury...will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

Extreme hardship to the applicant’s spouse must be established whether she resides in Sierra Leone or the United States, as she is not required to reside outside the United States based on the denial of the applicant’s waiver request. The AAO will consider all relevant factors in the adjudication of this case.

On appeal, counsel contends that relocation would result in extreme hardship to the applicant’s spouse because she would have “to readjust to life in a new country, with far inferior standards of medical and psychiatric care.” *Appeal Brief*, dated January 17, 2008. Counsel asserts that Sierra Leone is one of the

most troubled countries in the world and is still recovering from the civil war that ended in 2002. Counsel further asserts that the financial impact of moving the applicant's family to Sierra Leone is beyond dispute and "that such a drop in quality of life, as would occur for [the applicant's wife] and the children were they to follow [the applicant] there, would be extremely difficult for anyone." Counsel also states that the applicant's spouse is not a native of Sierra Leone and has no family or contacts there. Additionally, counsel claims that the applicant "would have an incredibly difficult time readjusting to life in a third-world country after living, working and raising a family in the United States for so long." The AAO notes that the applicant has resided in the United States for many years but also observes that his residence has been without authorization. In a statement dated November 10, 2006, the applicant's wife states the applicant would have no support in Sierra Leone as he has no family left there. The AAO does not find the record to establish that the applicant no longer has any family in Sierra Leone, and further notes that, as previously mentioned, hardship the applicant himself experiences as a result of his inadmissibility is not directly relevant to a section 212(i) waiver proceeding.

Although counsel states that relocation to Sierra Leone would result in extreme hardship for the applicant's family, the AAO does not find the record to support counsel's claim. The record includes copies of the Department of State's Country Specific Information on Sierra Leone, dated September 4, 2007, and Travel Advice from the British Foreign and Commonwealth Office, updated December 20, 2007. The Department of State report indicates that "[s]ecurity in Sierra Leone has improved significantly since the end of the civil war in 2002," but that the high level of poverty has resulted in an increase in crime. It advises people traveling to Sierra Leone to "maintain a heightened sense of awareness of their surroundings to help avoid becoming the victims of crime." However, the travel advice provided by the British Foreign and Commonwealth Office indicates that despite the increase in crime, Sierra Leone has a low crime rate. The AAO also notes that the travel advice indicates that "[v]isits to the Western Area of Sierra Leone, including Freetown, are usually trouble-free." The AAO also notes that the record does not establish how the security situation in Sierra Leone would affect the applicant's wife and children. While the AAO agrees that the applicant's spouse, a native of the United States, would experience hardship in relocating to a country where she has no previous ties, it does not find the record to establish that moving to Sierra Leone would result in extreme hardship for her. The AAO notes that no country conditions material has been submitted to establish that the applicant's wife would be unable to obtain employment in Sierra Leone and that the record indicates that the applicant's wife speaks English, the official language of Sierra Leone. Additionally, the record also fails to demonstrate that the applicant's wife has no transferable skills that would aid her in obtaining employment in Sierra Leone.

The Department of State's report also indicates that "[q]uality and comprehensive medical services are very limited in Freetown... [and] [m]edicines are in short supply" and the AAO acknowledges that Sierra Leone is a developing country and may have lower medical standards than the United States. However, the record contains no documentation that establishes that the applicant's wife and/or children have any medical conditions that would affect their ability to relocate. Accordingly, based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Sierra Leone.

The record also fails to establish extreme hardship to the applicant's wife if she remains in the United States, maintaining her employment. Counsel states the applicant's spouse has been diagnosed with Posttraumatic Stress Disorder and that the applicant "is and has been a highly stabilizing factor in [the applicant's wife's] life, and without him it is likely that her condition may deteriorate." Counsel claims that if the applicant's wife's condition worsens, "all 5 children [are] at risk for emotional and behavioral disorders" because the applicant's wife will be unable to parent her five children. In an evaluation of the applicant's wife, dated January 16, 2008, psychologist [REDACTED] diagnoses the applicant's wife with Posttraumatic Stress Disorder and indicates that she is at risk for serious depression. [REDACTED] reports that the applicant's wife "is extremely worried about the possible deportation of [the applicant]." [REDACTED] notes that the applicant's wife "has been under extreme stress and unrelenting anxiety which has little to no chance of lessening if [the applicant] is not allowed to stay in this country." He further reports that the applicant's wife's medical conditions "can certainly be exacerbated by this stress."

Although the input of any mental health professional is respected and valuable, the AAO notes that the submitted assessment by [REDACTED] is based solely on one interview with the applicant's wife. In that the conclusions reached in the submitted assessment are based solely on this single interview, the AAO does not find them to reflect the insight and elaboration commensurate with an established relationship with a mental health professional, thereby rendering them speculative and diminishing their value to a determination of extreme hardship. Moreover, other than the applicant's wife reporting to [REDACTED] that she is "borderline diabetic," there is no medical documentation in the record that the applicant's wife is suffering from any medical conditions. 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)).

Counsel claims that the applicant's wife would "have an extremely difficult job in providing for her five children." He states that "[t]he number of her financial responsibilities would increase sharply, and, were she to attempt to take on a second and possibly third job to pay for the bills by herself, she would have no one to provide physical care for the children, which would mean paying for child-care on top of everything else." The AAO notes that during the applicant's adjustment interview on October 31, 2006, the applicant stated that his mother-in-law cares for the children, while he and his wife work. Additionally, the AAO notes that the applicant has failed to provide sufficient documentation to establish his and his wife's current financial situation, including proof of their incomes and the family's expenses. The applicant's wife states that she "could not afford to go visit [the applicant] [in Sierra Leone], and phone calls are nearly impossible. If he were forced to go back to Sierra Leone, [they] might never see him again." The AAO notes that there would be additional expenses in visiting and keeping in contact with the applicant. However, the record fails to establish that the applicant and his wife cannot afford these additional expenses. Additionally, the record also fails to demonstrate, through published country reports, that the applicant will be unable to obtain employment and contribute to his wife's financial well-being from a location outside the United States. Accordingly, the record does not demonstrate the extent to which the applicant's removal would affect his family's finances. Based on the record before it, the

AAO does not find the applicant to have demonstrated that his wife would experience extreme hardship if he were to be excluded and she remained in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to 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(a)(6)(C)(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.