

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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**



tt5

FILE: [REDACTED] Office: ACCRA, GHANA

Date:

APR 14 2011

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:

SELF-REPRESENTED

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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, Accra, Ghana. 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 making a material misrepresentation, namely submitting a false marriage certificate in support of an application for an immigrant visa under the Diversity Visa Program. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with her husband.

The Field Office Director concluded that the applicant failed to establish that a bar to her admission to the United States would result in extreme hardship to the qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated December 3, 2010.

On appeal, the applicant's qualifying spouse provided a statement with the Notice of Appeal (Form I-290B) in support of the applicant's waiver application. In the statement, the applicant's spouse contends that he is suffering from emotional, physical and financial hardships as a result of his separation from the applicant. The qualifying spouse also asserts that he cannot relocate to Sierra Leone because his life is being threatened there due to his refusal to send money and to join the "Poro society." The qualifying spouse further indicates that the applicant is encountering emotional issues and enduring a threat to join the "Bondo society," which supports female circumcision.

The record contains the following documentation: the original Application for Waiver of Grounds of Inadmissibility (Form I-601), Form I-290B, a statement and letters from the qualifying spouse, a medical report regarding the applicant, a letter from the applicant's sister, a letter from the applicant's friend, articles regarding female circumcision, a letter from the applicant's neighbor, a letter from the qualifying spouse's employer, a bank statement for the qualifying spouse's account, copies of pages from the applicant and her daughter's passports and their birth certificates, certificates of divorce for the applicant and the qualifying spouse's prior marriages, an approved Petition for Alien Relative (Form I-130), the qualifying relative's naturalization certificate, a marriage certificate and documentation regarding the qualifying spouse's enlistment in the United States military. The entire record was reviewed and considered in rendering a decision on the appeal.

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:

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), 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. The applicant's husband 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. *See also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., *In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. See *Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of*

Shaughnessy, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“[redacted] was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to the Phillipines, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The applicant’s qualifying relative is her husband, a United States citizen. The documentation provided that specifically relates to the qualifying relative’s hardship includes a statement and letters from the qualifying spouse, a medical report regarding the applicant, a letter from the applicant’s sister, a letter from the applicant’s friend, articles regarding female circumcision, a letter from the applicant’s neighbor, a letter from the qualifying spouse’s employer, a bank statement for the qualifying spouse’s account and documentation regarding the qualifying spouse’s enlistment in the United States military. The entire record was reviewed and considered in rendering a decision on the appeal.

As aforementioned, the applicant’s qualifying spouse contends that he is suffering from emotional, physical and financial hardships as a result of his separation from the applicant. The qualifying spouse also asserts that he cannot relocate to Sierra Leone because his life is being threatened there due to his refusal to send money and to join the “Poro society.” The qualifying spouse further indicates that the applicant is also encountering emotional issues and enduring a threat to join the “Bondo society,” which supports female circumcision.

Based on the evidence on the record, the AAO finds that the applicant has not established that her husband will suffer extreme hardship as a consequence of being separated from her. The qualifying spouse contends that he is suffering from emotional and psychological hardships, such as depression, stress, high fevers and headaches, due to his separation from applicant. Moreover, the qualifying spouse states that the applicant's presence in Sierra Leone will "psychologically impact [his] training" in boot camp as a member of the United States military. The qualifying spouse further writes that he "won't be having the time to either visit or talk to her regularly while on training." However, the record does not contain any documentary evidence, aside from the qualifying spouse's own statement and letters, to demonstrate the types of emotional and psychological hardships that he would face. Further, there is no evidence to support the claim that his emotional and psychological hardships would be outside the ordinary consequences of being separated from a spouse. Assertions cannot be given great weight absent supporting evidence. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. 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)).

Moreover, in his letter, the qualifying spouse indicates that he is financially supporting the applicant and he is "tired of sending money to Sierra Leone." The record contains a letter from the qualifying spouse's employer indicating his hourly salary and a bank statement. However, the applicant failed to provide documentation regarding the qualifying relative's living expenses or any proof that he is sending money to the applicant. As such, the AAO is not in the position to reach conclusions regarding possible financial hardships that the qualifying spouse may be encountering due to his separation from the applicant.

The qualifying spouse also indicates that the applicant is suffering from emotional issues and is enduring a threat of female circumcision. The record contains a "medical report," a one page document indicating that the applicant has "psychosomatic pains" and that she "may require psychosocial therapy." The record also contains letters from the applicant's sister, friend and neighbor which indicate that she is being threatened to undergo female circumcision and is emotionally distressed. Articles regarding the practice of female circumcision among the Bondo society members in Sierra Leone were also submitted. The letter provided no detailed information about the nature of the threats and no explanation of how she has evaded this practice for twenty seven years. The AAO notes that the articles submitted by the applicant indicate that women are generally targeted from ages twelve to eighteen and that over ninety percent of the female population in Sierra Leone has been circumcised. Further, and more importantly, the applicant fails to address how her threat of female circumcision or her emotional issues pose a hardship to the qualifying spouse. As such, the applicant has not met her burden to demonstrate that the qualifying spouse would face extreme hardship if he were to remain in the United States without the applicant.

The applicant's spouse asserts that he cannot relocate to Sierra Leone because his life is being threatened there because he refused to send money and to join the "Poro society." However, the record contains no documentation to support claims regarding the applicant's life being threatened or regarding the "Poro society" in general. Nevertheless, the record indicates that the applicant's

spouse has recently enlisted in the U.S. Army Reserve and has an active duty obligation of four years. He would be unable to fulfill this obligation if he relocated to Sierra Leone, and the AAO therefore finds that the applicant had established that her husband would suffer extreme hardship if he relocated to Sierra Leone to reside with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her United States citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant 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. 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.