



U.S. Citizenship
and Immigration
Services

[REDACTED]

115

DATE: DEC 19 2012 OFFICE: PHILADELPHIA

FILE: [REDACTED]

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:

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.

Thank you,

A handwritten signature in black ink, appearing to be "Ron Rosenberg", with a long horizontal flourish extending to the right.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Sierra Leone who entered the United States pursuant to an altered passport on August 23, 2001. The applicant 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 entry to the United States by fraud or willful misrepresentation. The applicant is a beneficiary of an approved Petition for Alien Relative, as the spouse of a U.S. citizen, who seeks a waiver of inadmissibility in order to reside in the United States with her spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative. The Field Officer Director denied the application accordingly. *See Decision of the Field Office Director*, dated February 18, 2011.

On appeal, counsel for the applicant asserts that the applicant's spouse cannot relocate to Sierra Leone with his children because one of his children suffers from medical ailments and another would be subject to female genital mutilation (FGM). Counsel also asserts that the applicant's spouse and his family would fear for their safety in Sierra Leone and suffer financially. Counsel for the applicant contends that if the applicant's spouse were separated from the applicant, he would suffer emotionally and financially and his children would lose their primary caretaker.

In support of the waiver application and appeal, the applicant submitted medical information concerning her youngest son, a letter from the applicant's spouse's sister, affidavits from the applicant and her spouse, identity documents, financial documentation, and background information concerning Sierra Leone. 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:

- (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.

The record shows that the applicant obtained admission to the United States by presenting a false passport, and she was found to be inadmissible under section 212(a)(6)(C)(i) of the Act. She does not contest this finding on appeal, and she requires a waiver under section 212(i) of the Act.

Section 212(i) of the Act provides:

- (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 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 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...

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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant's qualifying relative in this case is her U.S. citizen spouse. The record contains references to hardship the applicant or her children would experience if the waiver application were denied. It is noted that Congress did not include hardship to an applicant or her children as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant or her children will not be separately considered, except as it may affect the applicant's spouse.

The record reflects that the applicant is a 34 year-old native and citizen of Sierra Leone. The applicant's spouse is a 48 year-old native of Sierra Leone and citizen of the United States. The applicant is currently residing with her spouse and children in Westlawn, Pennsylvania.

The applicant's spouse asserts that he has a committed and loving marriage with the applicant and that he relies upon her to act as the primary caregiver to their four children. The applicant's spouse further asserts that if he were separated from the applicant, then he would have to find a child care provider for his children and provide finances to his spouse in Sierra Leone until she could support herself. The record contains financial documentation including the applicant's spouse's tax return indicating he earned an income of approximately 50,000 dollars in 2009. The applicant submitted a financial accounting document estimating their monthly household financial obligations to be approximately 2,700 dollars. The applicant has not shown that her spouse would be unable to meet his financial obligations if he were separated from the applicant. However, the AAO acknowledges that acting as a single parent for four children involves considerable expense, physical challenges, and emotional hardship, and due consideration is given to the impact this circumstance would have on the applicant's spouse. While the record shows that the applicant's spouse has two sisters in the United States, one provided a statement indicating her unavailability to meaningfully assist him with his children, and the record does not suggest that he would otherwise receive assistance from family that would significantly alleviate his parental burden in the applicant's absence.

Counsel for the applicant asserts that the applicant filed an asylum claim in the United States because she was held captive by rebel forces in Sierra Leone and suffered physical and sexual abuse at their hands. As noted above, the applicant is not a qualifying relative in the context of this application so that any hardship she would suffer will be considered only insofar as it affects the applicant's spouse. The applicant's spouse has expressed concern for conditions in Sierra Leone, and the AAO gives due consideration to the additional emotional consequences he would endure should the applicant return there.

Considering all stated elements of hardship in the aggregate, the record is sufficient to show that the applicant's spouse would suffer extreme hardship should he be separated from the applicant.

Counsel for the applicant asserts that the applicant's spouse cannot relocate to Sierra Leone because he would leave behind his family members in the United States. Counsel contends that if the applicant's spouse's immediate family resides in Sierra Leone, they would suffer financially and medically and fear for their safety. The applicant's spouse asserts that he has a strong extended family network in the United States, including his sisters, his brothers-in-law, and their children. The applicant's spouse also asserts that he has worked for the same employer in the United States since 2003 and that he would lose this relationship and his income from this position if he relocated to Sierra Leone. The record contains a letter from the applicant's spouse's employer stating that the applicant's spouse has worked for [REDACTED] since September 30, 2003.

The applicant's spouse asserts that if he departed from the United States, his children would suffer from a lack of access to quality health care and education. It is noted that the record contains a letter from the physician stating that the applicant's spouse's youngest child was born with respiratory issues that led to a lung infection and could predispose him to further breathing issues. The letter also states that the applicant's spouse's youngest child suffers from a heart murmur and did not pass his hearing test in his right ear, both conditions that will require continued monitoring. The record reflects that one of the applicant's spouse's four children is a female. The record contains a document concerning FGM in Sierra Leone stating that approximately 90 percent of female in Sierra Leone have been subjected to FGM and that females who speak out against FGM run the risk of mutilation against their will. It is noted that the Department of State's 2011 Country Reports on Human Rights Practices confirms this FGM statistic for Sierra Leone. It is also noted that if the applicant's spouse left his four children behind in the United States, he would be separated from his children. In addition, the applicant's spouse notes that if he lost his employment in the United States, his children would no longer benefit from their current health benefits. The record also contains a letter from the applicant's spouse's sister stating that she would be unable to take on full responsibility for the applicant's spouse's four children if he left them behind in the United States. In this case, the record contains sufficient evidence to show that the hardships faced by the qualifying relative, in the aggregate, would rise to the level of extreme hardship if he relocated to Sierra Leone.

All elements of hardship to the applicant's spouse have been considered in aggregate. Based on the foregoing, the applicant has shown that denial of the present waiver application "would result in extreme hardship" to her spouse, as required for a waiver under section 212(i) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. All negative factors may be considered when deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant obtained admission to the United States by presenting a fraudulent passport, and remained for a lengthy period without a legal immigration status.

The positive factors in this case include:

The record does not reflect that the applicant has been convicted a crime; the applicant's U.S. citizen spouse would experience extreme hardship if she is prohibited from residing in the United States and returns to Sierra Leone; the applicant's four U.S. citizen children will face significant hardship should she reside outside the United States; the applicant has shown a propensity to cultivate a close family unit and provide meaningful emotional support to her spouse and children.

The applicant's violation of immigration law cannot be condoned, but the positive factors in this case outweigh the negative factors such that a favorable exercise of discretion is warranted.

In proceedings regarding a 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 met that burden, and she has shown that she warrants a favorable exercise of discretion. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.