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[Redacted]

Date: **FEB 21 2013**

Office: MOUNT LAUREL, NJ

FILE: [Redacted]

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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**DISCUSSION:** The waiver application was denied by the Field Office Director, Mount Laurel, New Jersey. The matter 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 Liberia who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the field office director failed to fully and fairly consider the applicant's waiver application, particularly considering the exigent circumstances of country conditions in Liberia at the time of the applicant's entry into the United States.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. [REDACTED] indicating they were married on July 31, 2010; a copy of the couple's U.S. citizen child's birth certificate; a statement from the applicant; school documents; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Liberia and other background materials; copies of tax and other financial documents; and an approved Petition for Alien Relative (Form I-130) filed by the applicant's brother. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

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.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and counsel does not contest, that the applicant entered the United States by misrepresenting her marital status and her true intent of remaining in the United States indefinitely. Specifically, the applicant stated on her visa application that she was married and had a child when she was actually not married and did not have a child. As the applicant concedes, she entered the United States using a non-immigrant visa even though she intended on remaining indefinitely in the United States. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.<sup>1</sup>

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).

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<sup>1</sup> The AAO notes that although counsel contends the applicant promptly made a full and voluntary disclosure of her misrepresentation in her asylum application, counsel does *not* contend that the applicant made a timely retraction of her misrepresentation. Indeed, the record does not support a finding that the applicant made a timely retraction of her misrepresentation. The applicant entered the United States on May 19, 2000, and filed an application for asylum on July 24, 2000, more than two months later. This case is therefore distinguished from cases in which aliens used fraudulent documents only *en route* and did not present them to U.S. officials for admission, but, rather, immediately requested asylum. *See, e.g., Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *cf. Matter of Shirdel*, 18 I&N 33 (BIA 1984).

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.

In this case, the applicant states that her husband is an asylee from Liberia based upon the persecution he and his family suffered during the Liberian civil war. The applicant states that they both work to support themselves and that they are expecting their first child in February 2012. The applicant contends she also has a ten-year old son from a previous marriage. She states she works full-time as a nursing assistant and that her husband had been employed until September 2011, but now works less than ten hours per week and receives unemployment benefits. According to the applicant, both she and her husband also attend school. The applicant states that their family is facing financial difficulties and that they are struggling to pay for her ten-year old son’s tuition. In addition, the applicant states she suffered severe abuse and hardship in Liberia during the civil war and that her family cannot return to live there. She states the country remains unsafe and that the infrastructure is severely impaired. She contends that she has been granted temporary protected status and deferred enforcement departure by the United States.

After a careful review of the record, the AAO finds that if the applicant’s husband, Mr. [REDACTED], returned to Liberia to avoid the hardship of separation from his wife, he would experience extreme hardship. The record shows that Mr. [REDACTED] was granted asylum in 1997. The record further shows that his mother as well as three other family members were also granted asylum. In addition, the record shows that Mr. [REDACTED] has lived his entire adult life in the United States. Furthermore, the AAO takes administrative notice that the U.S. Department of State recognizes that Liberia remains one of the

poorest countries in the world and that many basic services, such as public power, water, and sewage, are either limited or unavailable. *U.S. Department of State, Country Specific Information, Liberia*, dated April 27, 2012. Under these unique circumstances, the AAO finds that the hardship Mr. [REDACTED] would experience if he returned to Liberia, the country he fled for fear of persecution, would result in extreme hardship.

Nonetheless, Mr. [REDACTED] has the option of staying in the United States and there is insufficient information in the record to show that he would suffer extreme hardship if he remained in the United States without his wife. Although the AAO is sympathetic to the family's circumstances, if he decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Regarding the applicant's financial hardship claim, there is insufficient documentation in the record. The applicant claims she works full-time while her husband works less than ten hours per week at an assisted living facility and receives unemployment compensation. However, there is no letter from Mr. [REDACTED] in the record, no letter from the assisted living facility, and no documentation addressing his wages. Although the record contains a Form 1099-G showing \$14,400 in unemployment compensation, this document is from 2010 and does not list the recipient's name. The AAO notes that as recently as May 31, 2011, Mr. [REDACTED] submitted an Affidavit of Support Under Section 213A of the Act (Form I-864), affirming he would financially support the applicant based on their combined income of \$76,428, of which his wife earned \$36,041. *Affidavit of Support under Section 213A of the Act (Form I-864)*, dated May 31, 2011. According to their 2010 taxes in the record, Mr. [REDACTED]'s occupation is listed as Social Worker. Although the AAO does not doubt that Mr. [REDACTED] will experience some financial hardship, there is insufficient information in the record to evaluate the extent of his hardship. In sum, the record does not show how the applicant's situation is unique or atypical compared to others in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation). Even considering all of the evidence in the aggregate, there is insufficient evidence for the AAO to conclude that Mr. [REDACTED] would suffer extreme hardship if he decided to remain in the United States without the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to Mr. [REDACTED], the qualifying relative in this case.

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A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband 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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility, 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.