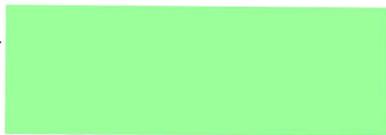


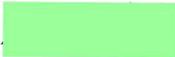


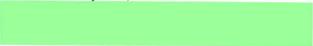
**U.S. Citizenship  
and Immigration  
Services**

(b)(6)



DATE: **JAN 09 2013** OFFICE: SEATTLE, WASHINGTON

FILE: 

IN RE: Applicant: 

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:



**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 read "Ron Rosenberg", with a long horizontal line extending to the right.

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

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 procured admission to the United States through willful misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, contests the finding of inadmissibility, and in the alternative, seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with his wife, children, and mother-in-law in the United States.

The Field Office Director concluded that the applicant failed to establish extreme hardship and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated August 24, 2011.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) erred in denying the waiver application, abused its discretion, and committed errors of law by: failing to consider all relevant hardship factors in the aggregate; not giving proper weight to the hardship factor of family separation; and discounting hardship factors credibly asserted to by the applicant's spouse. *See Form I-290B, Notice of Appeal or Motion*, dated September 21, 2011.

The record includes, but is not limited to: briefs and correspondence from counsel; letters of support; identity, medical, employment, and financial documents; documents in support of conditions in Sierra Leone; and articles concerning adult caregivers. 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) *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).

The Board of Immigration Appeals (BIA) has held that for immigration purposes, the term *fraud* "is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party." *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). The "representations must be believed and acted upon by the party deceived to the advantage of the deceiver." *Id.*

The intent to deceive is not a required element for a willful misrepresentation of a material fact. See *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). The relevant standard for a willful misrepresentation is knowledge of falsity. *Forbes v. INS*, 48 F.3d 439, 442 (9<sup>th</sup> Cir. 1995).

In *Kungys v. United States*, 485 U.S. 759 (1988), the Supreme Court found that the test of whether concealments or misrepresentations are “material” is whether they could be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, i.e., to have had a natural tendency to affect, the legacy Immigration and Naturalization Service’s (now the USCIS) decisions. Additionally, *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1960; AG 1961) states that the elements for a material misrepresentation are as follows:

A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:

- a. the alien is excludable on the true facts, or
- b. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in proper determination that he be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (AG 1961).

The Field Office Director found the applicant inadmissible for having initially procured admission to the United States around May 5, 2002, by failing to disclose his true identity and purpose for coming to the United States upon the presentation of a passport that did not belong to him.<sup>1</sup> On appeal, counsel does not contest that the applicant made a willful misrepresentation upon the presentation of the false passport. However, counsel contests the materiality of the misrepresentation as “he would still have been eligible to apply for asylum despite the fact that he used a false passport to enter the country.” *Brief in Support of the Appeal*.

Whether the applicant would have been eligible to apply for asylum is not relevant to determining whether his misrepresentation was material under the present facts. The applicant made a willful misrepresentation in order to gain admission to the United States, not to apply for asylum. Had he revealed his true identity to the inspecting officer, he would have been asked further questions concerning his purpose for seeking admission. Thus, the applicant misrepresented his identity to gain a benefit under the Act for which he was not eligible. The AAO finds that the applicant’s misrepresentation is material as he would have been excludable on the true facts; i.e., he did not have the identity as indicated on the passport or proper travel documents under his true identity. Accordingly, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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<sup>1</sup> The AAO notes that during his affirmative asylum interview, the applicant indicated that he believed that the Guinean government issued the passport and that it contained his photograph and a U.S. visa.

On appeal, counsel also asserts that the applicant timely retracted the misrepresentations made in connection with his initial admission to the United States upon revealing his true identity in his affirmative asylum application filed on November 5, 2002. The AAO notes that a timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for section 212(a)(6)(C)(i) eligibility. *See, e.g., 9 FAM 40.63.N4.6.* Whether a retraction is timely depends on the circumstances of the particular case. *See id.* In general, it should be made at the first opportunity. *See id.* If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview. *See id.*

The record demonstrates that the applicant had no intention of revealing his true identity or surrendering the false passport and declaring it to be false upon its presentation to U.S. immigration officials in May 2002. Instead, he used the document for admission to the United States and admitted that the document was false only during his asylum interview conducted on March 5, 2008. Therefore, the applicant cannot be said to have been acting "timely" to purge the misrepresentation of his identity. He was correctly found to be inadmissible under section 212(a)(6)(C)(i) of the Act and he requires a waiver under section 212(i) of the Act.

Section 212(i) of the Act provides, in relevant part:

- (1) The Attorney General [now 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 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 [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 is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Hardship to the applicant, his children, adult daughters, and mother-in-law can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only demonstrated qualifying relative in this case. 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).

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 BIA 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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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 (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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 v. I.N.S.*, 138 F.3d 1292, 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.

Counsel contends that the applicant's spouse will suffer extreme emotional, psychological, and financial hardship in the applicant's absence as: the applicant's removal would lead to significant

mental stress upon her because she would be worried about paying bills, buying food, and raising her children; she would lose the love of her life, and she would be a single parent and caregiver; she could lose her two foster children, nephews whom she and the applicant intend to adopt and who depend on the applicant as the only father figure they have known; the applicant is the primary financial provider for their family, including her two daughters in college; and she has limited time to work as she must care for her children as well as her medically disabled mother. The applicant further discusses: the circumstances concerning his claim for asylum in the United States and his subsequent search for his mother and sister upon leaving Sierra Leone; the love he feels and the relationships that he has with his spouse and her family members; the pain he would feel upon separation from his foster children; the support that he provides in caring for his mother-in-law; that he would be unable to continue to support his family as he does not have a job, home, or family in Sierra Leone; and that he is the sole financial provider as his spouse does not work outside the home so that she could take care of her mother and children. The applicant's spouse also states: her life is complete with the applicant, and they take care of one another; they have decided to have a biological child together; she is a full-time student and would have to give-up her academic studies to find work to support her family in the applicant's absence; and she is unsure if she would be able to continue with the adoption of her nephews without the applicant, and that this would destroy her and their family.

The record is sufficient to establish that the applicant's spouse would suffer hardship in the applicant's absence. The applicant serves as his family's primary breadwinner, and he has been steadily employed by [REDACTED]. His spouse is the essential caregiver to her disabled mother and children, including her nephews whom she and the applicant are in the process of adopting. Although the record does not include specific evidence of labor or employment conditions in Sierra Leone, the AAO finds that in the aggregate, the applicant's spouse would suffer extreme hardship as a result of separation from the applicant.

Counsel contends that the applicant's spouse will suffer extreme hardship upon relocating to Sierra Leone to be with the applicant as: she would be unable to bring her mother and children with her as the State of Washington would not allow her to take her foster children to Sierra Leone; she would lose contact with her family; there are numerous human rights abuses as reported by the U.S. government, and her personal safety would be at risk; and she would live in extreme poverty as the applicant does not have a family, a home, or a job there. Counsel also contends that the applicant's spouse's daughters would suffer extreme hardship as they would not receive the same level of education in Sierra Leone, and that the applicant would suffer extreme hardship as he has a well-founded fear of persecution there.

The record is sufficient to establish that the applicant's spouse would suffer hardship if she were to relocate to Sierra Leone. The record demonstrates that she has continuously resided in the United States. She maintains close relationships with her U.S. citizen daughters, and resides with her U.S. citizen mother and children. Additionally, the U.S. Department of State's current travel advisory states: "Areas outside Freetown lack most basic services ... Travelers are urged to exercise caution especially when traveling beyond the capital ... Travel outside the capital after

dark is not allowed for U.S. Embassy officials and should be avoided by all travelers ... There are occasional unauthorized, possibly armed, roadblocks outside Freetown, where travelers might be asked to pay a small amount of money to the personnel manning the roadblock ... Public demonstrations are rare, but can turn violent. U.S. citizens are advised to avoid large crowds, political rallies; and street demonstrations ... maintain security awareness at all times." *Travel Advisory, Sierra Leone*, issued April 30, 2012. In the aggregate, the AAO finds that the applicant's spouse would suffer extreme hardship if she were to relocate to Sierra Leone.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives)

*Id.* at 301.

The BIA further stated that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.*

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The favorable factors in this case include extreme hardship to the applicant's U.S. citizen spouse, community ties, the payment of taxes, and the absence of a criminal record. The unfavorable factors include the applicant's misrepresentation of his identity upon admission to the United States.

Although the applicant's violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. Therefore, the AAO finds that a favorable exercise of discretion is warranted.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

**ORDER:** The appeal is sustained.