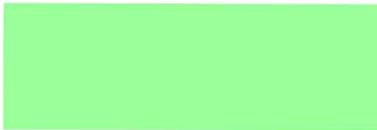




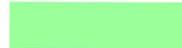
U.S. Citizenship
and Immigration
Services

(b)(6)



Date: AUG 26 2014 Office: WASHINGTON D.C.

FILE:



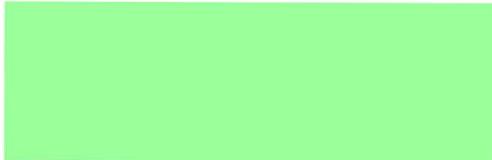
IN RE:

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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Washington, D.C., denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a 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). He is the spouse of a U.S. citizen and has three U.S. citizen children. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on January 31, 2014.

On appeal, counsel for the applicant asserts the director's decision was in error, and that the evidence in the record demonstrates the applicant's spouse will experience emotional, psychological, medical and financial hardship upon separation, and that she would experience hardship upon relocation, including the hardships that would impact her children.

The record contains, but is not limited to, the following documentary submissions: statements from counsel for the applicant; statements from the applicant; tax returns for the applicant's spouse; background materials on the country conditions in Sierra Leone; photographs of the conditions in Sierra Leone; statements from family and friends of the applicant and his spouse; birth certificates for the applicant's children; a mental health report for the applicant's spouse; a statement from the applicant's spouse's doctor.

Section 212(a)(6)(C) of the Act states, 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 chapter is inadmissible.

The record indicates that the applicant misrepresented a material fact, his marital status, when applying for a visitor's visa to enter the United States. As this misrepresentation would have a tendency to influence the decision of the consular officer with regard to the ties he has with his home country it is a material fact and the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest these findings on appeal.

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 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 a VAWA self-petitioner, 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. Hardship to an applicant or their children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse 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 the adjudicator must then determine whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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 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 entire record was reviewed and all relevant evidence considered in rendering this decision.

The applicant has asserted that his spouse would experience extreme hardship upon relocation to Sierra Leone because of the conditions there. He explains that Sierra Leone has a high crime rate, poor environmental conditions that would cause his spouse to get sick and exacerbate the medical conditions of his children. He further states that his children would experience extreme hardship and that this would impact his spouse. He further states that his spouse and children would not be able to get proper medical care in Sierra Leone. The applicant also asserts that they would suffer a financial loss on their house if they were forced to relocate, lose the medical insurance coverage provided by his wife’s employment and be unable to find adequate employment in Sierra Leone.

The record contains substantial country conditions materials on Sierra Leone. The Country Reports on Human Rights Practices for 2013, published by U.S. State Department, states that major human rights problems exist in the country, including official corruption, trafficking in person and child labor, arbitrary arrests and detentions and violence against women and girls, including female genital mutilation. An article by the [REDACTED], a non-profit organization, states that most of the drinking water in Sierra Leone is collected from polluted water and that infections and parasites leads to risks of Hepatitis A, Typhoid and Malaria. We also take note that the Centers for Disease Control and Prevention published a travel warning on July 31, 2014, over concerns about an outbreak of the Ebola virus and warning U.S. residents against non-essential travel to Sierra Leone. A report from the Bureau of Diplomatic Security in the U.S. State Department states that Sierra Leone ranks 180 of 187 on the human development index and that poverty is endemic. It further states that hyperinflation, high unemployment rates and low incomes create conditions of gross economic hardship and criminality. The report also notes the existence of poor infrastructure, widespread corruption, unreliable communications and electricity, consistently dangerous living conditions and endemic malaria. The report classifies Sierra Leone as “critical” for crime and that

nighttime robberies, assaults, petty street crime and home invasions are common. This report also notes that medical facilities fall critically short of U.S. and European standards and that medical supplies are in short supply, with quality and comprehensive medical services are very limited in Freetown and almost nonexistent outside the capital. Finally, a U.N. report on Sierra Leone states that it ranks among the world's poorest nations, suffering decades of economic decline and eleven years of armed conflict. It also notes that poverty remains widespread with 60% of the population living on less than \$1.25 a day.

The record contains a statement from the applicant's spouse's doctor stating that she is under treatment for hypertension and is prescribed Micardis, HCTZ and Nexium. Based on the evidence discussed above the record establishes that the applicant's spouse would have trouble finding adequate medical facilities and treatment in Sierra Leone. An attached record indicates she also suffers from iron deficiency, which the Micardis is designed to treat. The record also contains a dental patient chart for the applicant's young son, indicating that he has fillings and containing a log which indicates he is seen on a regular basis.

The record establishes that Sierra Leone suffers from high crime, poor environmental and economic conditions and corruption. Country conditions materials submitted into the record demonstrate that the living conditions in Sierra Leone would impose physical hardships on the applicant's spouse and children. The record also establishes that the applicant's spouse and family would have limited access to medical care and medicine in Sierra Leone, posing further hardships. When these hardships are considered in the aggregate the record establishes that the applicant's spouse will experience physical and financial hardships rising to the level of extreme hardship if she were to relocate to Sierra Leone with her children.

With regard to hardship upon separation, the applicant explains that he is the primary caretaker of their two children, and that without his help his spouse would have to cut back on her employment and bear the burden of being a single mother of two children. The applicant also states that his spouse is suffering mental and emotional hardship due to his immigration status, and that it would be even worse for her if he were removed.

The record contains a copy of a mental health evaluation of the applicant's spouse. This evaluation describes the hardships being experienced by the applicant, including the emotional and psychological hardships related to the applicant's inadmissibility. The report explains that the physical burdens of working two jobs to support her family and the emotional stress related to the fact that the applicant might be removed is affecting her mental and emotional health. The evaluation describes the symptoms of emotional hardship, including trouble sleeping, motivational issues and decreased concentration and concludes that she is experiencing symptoms of Major Depression. The report states that the applicant's spouse would be further saddened to see her children lose their father. The current Ebola crisis in Sierra Leone would heighten her concern for the applicant's safety and health if he were removed and they remained in the United States

The record also contains numerous pictures of the applicant with his spouse and children and the applicant explains that he is the one who takes their children to school and medical appointments and who is generally responsible for their care. This is corroborated by letters from friends and family

submitted into the record. In addition, as noted above, the applicant's ten year old son has orthodontal problems, requiring periodic visits to the dentist for treatments and checkups after a surgery in 2013.

The record contains sufficient evidence to demonstrate that the applicant's spouse would experience emotional hardship if the applicant were removed. In addition, while the record does not contain sufficient documentation to demonstrate the applicant's spouse would be unable to meet her financial obligations, the record establishes that there would be some financial impact because the applicant would not be there to care for their children or take them to doctor's appointments. In addition, the applicant's spouse currently works long hours in order to help meet the family's financial obligations. If the applicant were removed she would be responsible for caring for their children, including taking them to doctor's visits, and would lead the applicant's spouse to reduce her hours at work and/or pay for child care for her children. The record establishes that the applicant has two children with his spouse, and that she would experience the burden of caring for the children as a single-mother. Although no single factor in this case establishes extreme hardship, when these hardships are considered in the aggregate, the record establishes that the applicant's spouse would experience extreme hardship due to separation if the applicant were removed.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

See Matter of Mendez-Morales, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300 (Citations omitted).

The AAO finds that the unfavorable factors in this case include the applicant's misrepresentation, periods of unauthorized presence and employment and his procurement of a fraudulent stamp on his I-94. The favorable factors in this case include the presence of the applicant's spouse, the presence of his U.S. citizen children, the hardship that his spouse would experience and the lack of any criminal record for the applicant during his residence in the United States.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. 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.