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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**



[Redacted]

Date: **MAR 20 2014**

Office: WASHINGTON, DC [Redacted]

IN RE: [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 (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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Washington, DC, denied the waiver application and 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 pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to obtain 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 children 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 applicant established extreme hardship, particularly considering country conditions in Sierra Leone and the fact that the applicant's husband suffers from hypertension.

The record includes, but is not limited to, the following documents: a copy of the marriage certificate of the applicant and her husband, [REDACTED], indicating they were married on February 6, 2009; a copy of the birth certificate of the couple's son; a statement from the applicant; a statement from Mr. [REDACTED] copies of pay stubs, tax returns, bills, and other financial documents; a copy of the U.S. Department of State's Country Specific Information for Sierra Leone and other background materials; copies of [REDACTED] medical records; copies of photographs of the applicant and her family; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

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 that the applicant requested and obtained an R-2 nonimmigrant visa as the spouse of a temporary nonimmigrant religious worker after she was already divorced. 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. Counsel does not contest this finding of inadmissibility on appeal.

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.

In this case, the applicant's husband, [REDACTED], contends that he and his wife have a son together and that his wife also has two daughters from a previous marriage. [REDACTED] states that he lost his job in May of 2010 and was only re-employed in December of 2011. He states that his income for the entire year of 2011 was less than \$12,000 and because his wife has been sustaining their family, if she departed the United States, he would be unable to support his family by himself. In addition, according to [REDACTED], if his wife departed the United States, he would lose his soul mate and would suffer extreme emotional pain. Furthermore, [REDACTED] contends he cannot return to Sierra Leone, even though he was born there, because he has resided in the United States for eight years, has assimilated into American society, and most of the people he cares about reside in the United States. Moreover, [REDACTED] asserts that Sierra Leone is one of the poorest countries in the world and that unemployment is so high that even though he has a Teacher's Certificate from Sierra Leone, he would be unable to find employment. Furthermore, [REDACTED] contends he suffers from hypertension and that medical facilities in Sierra Leone are dangerously lacking in basic medical services, posing extreme health risks to him and his children, and he would have no means of acquiring the daily medication he needs. Moreover, he claims he fears that his daughters may be initiated into the [REDACTED] in Sierra Leone, which performs female genital mutilation often without regard to parental views.

After a careful review of the entire record, there is insufficient evidence to show that the applicant's husband, [REDACTED], will suffer extreme hardship if the applicant's waiver application were denied. If [REDACTED] 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 emotional hardship, although the AAO is sympathetic to the family's circumstances, the record does not show that [REDACTED] hardship would be extreme, unique, or atypical compared to others separated from a spouse. *See Perez v. INS*, 96 F.3d 390 (9th 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). With respect to financial hardship, the record contains evidence contradicting [REDACTED] purported employment history. According to a [REDACTED] Enrollment Notice in the record, dated May 22, 2011, [REDACTED] was terminated from employment on May 13, 2011, not in May 2010 as he contends. In

addition, according to a copy of [REDACTED] pay stub for the pay period November 21, 2011, to December 4, 2011, his year-to-date earnings totaled over \$10,411, contradicting his contention that he was not employed until December 2011. Furthermore, copies of Mr. Moiwo's two W-2 forms in the record indicate his income in 2011 totaled \$25,386, contradicting his assertion that he earned less than \$12,000 for the year. Although the AAO does not doubt that [REDACTED] would suffer some financial hardship, without consistent evidence in the record, the AAO is unable to determine the extent of his hardship. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that if [REDACTED] remains in the United States, the hardship he will experience would be extreme, unique, or atypical compared to others separated from a spouse. *See Perez v. INS*, 96 F.3d 390 (9th 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).

With respect to returning to Sierra Leone to avoid the hardship of separation, there is insufficient evidence in the record to show extreme hardship. As [REDACTED] himself concedes, he was born in Sierra Leone and obtained his Teacher's Certificate in Sierra Leone. In addition, according to his Biographic Information form (Form G-325A), he married his first wife in Sierra Leone, his mother continues to live in Sierra Leone, and the record shows he lived in Sierra Leone until he was almost forty years old. Therefore, the record establishes that [REDACTED] is familiar with the culture of Sierra Leone and continues to have family ties there. Although the record shows the couple has a U.S. citizen son together who is currently four years old, the only qualifying relative in this case is [REDACTED]. The record does not establish that any hardship the couple's son would experience would cause hardship to [REDACTED] that is extreme, unique, or atypical. Regarding the contention that the applicant's daughters would potentially be at risk of female genital mutilation in Sierra Leone, the record does not show when, if ever, the applicant's daughters have lived with the applicant. According to both the applicant's and [REDACTED], dated April 5, 2011, since at least 2003 through April 5, 2011, the applicant did not list her daughters as living with her, but rather, she states that they live in Atlanta, Georgia, while the applicant and Mr. [REDACTED]. There is no evidence establishing that the applicant's daughters would relocate to Sierra Leone to live with the applicant, particularly considering they did not live with her in the United States, and, in any event, the record does not show that any hardship they may experience would cause extreme hardship to [REDACTED] hypertension, although the record contains copies of his medical records confirming this diagnosis, there is no letter in plain language from any health care professional addressing the prognosis, treatment, or severity of [REDACTED] hypertension and the most recent medical records are from December 29, 2010, more than a year before the applicant filed her waiver application. Without more detailed and more recent information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. With respect to [REDACTED] contention that he would be unable to find employment in Sierra Leone, there is no evidence in the record to corroborate his claim and, according to [REDACTED] himself, he has a Teacher's Certificate that he obtained in Sierra Leone. To the extent Sierra Leone has a high poverty rate and may not have the same education standards as in the United States, the record does not show that [REDACTED] return to Sierra Leone would be any more difficult than would normally be expected under the circumstances. Even

considering all of the factors in the case cumulatively, there is insufficient evidence showing that the hardship the applicant's husband would experience if he returned to Sierra Leone amounts to extreme hardship.

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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.