

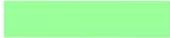


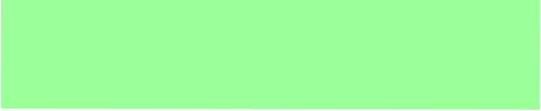
U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: OCT 01 2014 Office: WASHINGTON, DC

FILE: 

IN RE: 

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,

Ron Rosenberg
Chief, Administrative Appeals Office

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

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. 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 applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *See Decision of the Field Office Director*, dated March 12, 2013.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) erroneously found insufficient evidence of extreme hardship, misapplied the law, and failed to acknowledge probative facts. *See Form I-290B, Notice of Appeal or Motion*, dated April 10, 2013.

The record contains, but is not limited to: sworn statements from the applicant and his qualifying spouse; financial documentation; employment letters for the applicant and his spouse; country-conditions materials about Sierra Leone; documentation relating to the applicant's criminal record; identification documents for the applicant and qualifying spouse; a brief and letters from the applicant's attorneys; two mental-health assessments of the qualifying spouse; letters from friends; photographs; three Forms I-485, Applications to Register Permanent Residence or Adjust Status; and an approved Form I-130, Petition for Alien Relative, with supporting documents. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 presented a fraudulent passport with a false name, birth date and nationality when he was admitted into the United States under the visa-waiver program on September 17, 2003. Thus, the applicant entered the United States by misrepresenting a material fact, to wit, his identity, and is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding on appeal.

Section 212(i) of the Act provides, in pertinent 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 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 resident spouse or parent of such an alien.

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 the applicant or his child 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 USCIS then assesses 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.

On September 28, 2012, we reviewed the applicant’s appeal of an earlier-filed Form I-601 and found that the applicant’s spouse would experience extreme hardship upon relocation to Sierra Leone based upon conditions there, the hardship caused by relocating with her daughter, and her ties to the United States. We again find that the qualifying spouse would suffer extreme hardship upon relocation to Sierra Leone.

With respect to conditions in Sierra Leone, according to the most recent Sierra Leone Travel Warning, dated August 14, 2014, the U.S. Department of State warns U.S. citizens against all non-essential travel to Sierra Leone. Specifically, the travel warning indicates that, as of August 11, there have been 759 confirmed cases and 293 deaths due to an outbreak of the Ebola virus disease in Sierra Leone. As a result, the health system in the country is overwhelmed and there are insufficient resources to address the continuing transmission of the disease. The qualifying spouse also indicates that Sierra Leone is also one of the poorest countries in the world with a very high rate of unemployment. The record includes documentation to support these assertions, including materials from the CIA World Factbook and Country Specific Information from the Department of State.

In addition, the qualifying spouse explains that relocating with her daughter to Sierra Leone would be difficult due to the cultural and education differences they would face. She states that she is worried that her daughter could be forced to undergo female genital mutilation (FGM), and the record contains documentation to corroborate her concerns. In addition, the U.S. Department of State Country Reports on Human Rights Practices for 2013 states that FGM is widely practiced on women and girls in Sierra Leone and that 81% of girls ages 15 through 19 have undergone FGM. Although his step-daughter is not a qualifying relative for purposes of the applicant’s waiver, the qualifying spouse explains that she is experiencing emotional hardship because of FGM becoming a

real possibility for her daughter. Moreover, the qualifying spouse also indicates that she has lived in the United States for 15 years, and her entire family lives in the United States, including her U.S. citizen parents and brother, as well as all her friends. Considering the evidence in the aggregate, the record establishes the applicant's spouse would suffer extreme hardship as a result of relocating to Sierra Leone with the applicant.

With regard to hardship his spouse would experience upon separation, the applicant and his spouse both assert that she would experience emotional and financial hardships if the applicant had to return to Sierra Leone due to his inadmissibility. In our previous decision, addressing the financial hardship to his spouse, we found that the applicant's spouse depends on his income. However, we also found that the record failed to demonstrate that she would be unable to rearrange her finances in some manner to mitigate the financial impacts of the applicant's departure.

In the current appeal, the applicant supplements the record with additional utility bills demonstrating that the applicant and his spouse have not always been able to timely pay their bills. In addition, bank statements from their joint account indicate that their monthly balances have often been very low or negative, demonstrating that they sometimes cannot cover their expenses. It appears that, given the applicant's spouse's income as shown in tax documents and bank statements, the applicant's spouse would suffer financial hardship without the applicant's support. In addition, the record illustrates through the bank statements and tax documentation that the applicant and his spouse have combined their incomes and together pay for their expenses. The qualifying spouse also asserts that the applicant works to support her and her daughter. As aforementioned, the record establishes that the applicant and his spouse have difficulty paying their bills timely, and therefore without the applicant's additional financial contribution, the applicant's spouse would experience financial hardships.

The applicant and his spouse also assert that the applicant's spouse will experience emotional hardship if the applicant is removed, because she is already suffering psychologically due to the applicant's inadmissibility. The record contains two psychological assessments of the applicant's spouse, prepared by the same licensed clinical social worker in 2008 and 2009. The social worker indicates that the qualifying spouse is experiencing depression, intense anxiety and stress-related headaches, which affect her ability to focus at work and, according to the applicant's spouse, have led her to call in sick several times. In addition, the social worker strongly recommends that she seek assistance through a local mental-health agency, as she has no health insurance to otherwise pay for such services; the social worker suggests counseling and possibly medication. Moreover, the applicant's spouse asserts in her sworn statement that she and the applicant have developed very strong emotional ties and that they are inseparable. She also states that the applicant is her source of emotional strength, and that he is a major source of support and hope for a life out of poverty. In addition to assisting her emotionally, the qualifying spouse also states that the applicant has helped to raise her daughter and provides child care for her daughter by taking her to extracurricular activities and to the hospital. Considering the psychological assessments, the sworn statements, and the length of their marriage of over ten years, we conclude that that the applicant's spouse is experiencing and would experience emotional and psychological hardships upon her separation from the applicant.

As stated above, corroborative evidence in record confirms that the applicant is working and that they combine their income and the applicant's spouse relies on the applicant's income. These financial concerns combined with the emotional and psychological issues that the qualifying spouse would experience due to her separation from the applicant, considered in their cumulative effect, constitute hardship beyond the common results of removal. When evidence of this hardship is considered in the aggregate, the record establishes the applicant's spouse would suffer extreme hardship as a result of separation from the applicant. We thus conclude that the applicant's qualifying spouse would suffer extreme hardship if she relocated to Sierra Leone to be with the applicant or if she was separated from him due to his inadmissibility.

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 states 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 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.* at 301.

The favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse would face if the applicant is not granted this waiver, whether she accompanied the applicant or remained in the United States; his ties to the United States, including to his U.S. citizen stepdaughter whom he financially and emotionally supports; his payment of taxes; and his letters of support from friends. The unfavorable factors in this matter are the applicant's use of a fraudulent document to enter the United States and his 2012 misdemeanor conviction for disorderly conduct.

Although the applicant's immigration and criminal 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. 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.