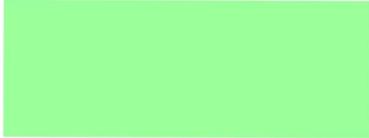


(b)(6)



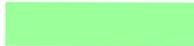
U.S. Citizenship
and Immigration
Services



Date: JAN 22 2015

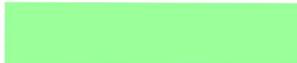
Office: SEATTLE

FILE:



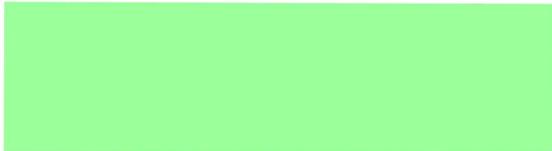
IN RE:

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, Seattle, Washington, denied the waiver application and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant, a native and citizen of Sierra Leone, was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States through fraud or misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to reside in the United States with his U.S. citizen spouse.

The Field Office Director initially denied the applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (Form I-601) on October 7, 2009, and on November 6, 2009, the applicant appealed the decision to the AAO. On April 23, 2010, we remanded the case to the field office as the record failed to identify the applicant's country of citizenship. The Field Office Director subsequently determined that there is sufficient evidence to establish that the applicant is a citizen of Sierra Leone. On October 31, 2013, the Field Office Director issued a decision to deny the Form I-601. The Field Office Director subsequently granted the applicant's request to reopen the Form I-601 on December 9, 2013, and again denied the application on May 27, 2014.

The Field Office Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and further concluded that the applicant failed to establish that he warranted a favorable exercise of the Secretary's discretion and denied the Form I-601 accordingly. *See Decision of the Field Office Director, May 27, 2014.*

On appeal, counsel contends that U.S. Citizenship and Immigration Services (USCIS) was incorrect in the determination that the applicant's spouse would not suffer extreme hardship if the waiver application is not approved and abused its discretion in denying the waiver application as a matter of discretion. Counsel submits additional evidence of hardship to the applicant's spouse.

The record includes, but is not limited to, the following documentation: briefs filed by counsel in support of Form I-601 and Form I-290B, Notice of Appeal or Motion; statements from the applicant and the applicant's spouse; medical and psychological documentation for the applicant's spouse; financial documentation; letters of reference; criminal documentation for the applicant; and country conditions information on Sierra Leone. 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) 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.

The record indicates that the applicant entered the United States on August 1, 2001 using a fraudulent Gambian passport. The applicant does not contest the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), 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 the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's U.S. citizen wife is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be qualifying relatives. However, although children are not qualifying relatives under this statute, U.S. Citizenship and Immigration Services (USCIS) does consider a child's hardship a factor in determining whether a qualifying relative experiences extreme hardship. 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 v. I.N.S.*, 138 F.3d 1292, 1293 (9th Cir. 1993), (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 experience psychological hardship if the applicant's waiver application is not approved. Counsel states that the applicant's spouse suffered from and was treated for major depressive disorder as a teenager as a result of abuse suffered as a child, and that her depression continues to have a defining impact on her day-to-day life. In support of this contention, the applicant submits three psychological reports conducted during the past five years. The first evaluation, dated July 9, 2009 from a licensed professional counselor, states that the applicant's spouse has experienced significant symptoms of major depressive disorder, both as an adolescent and as a young adult, and that it is certain that she will once again experience symptoms

of this disorder when faced with distressing circumstances in the future. The diagnostic summary in this evaluation indicates that the applicant's spouse suffers from past and current intermittent symptoms of major depressive disorder. The second report, a declaration from a licensed mental health counselor¹ dated December 23, 2013, provided a diagnosis of major depressive disorder, recurrent. The mental health counselor stated that the episodes of major depressive disorder experienced by the applicant's spouse in her early teens and later in her adulthood have caused clinically significant distress in her usual functioning and daily activities, particularly a depressed mood, poor self-image, insomnia, loss of interest in previously enjoyed activities, and loss of concentration. The mental health counselor stated that her past and current emotional difficulties without the support of the applicant would exacerbate the symptoms of depression and anxiety that she manifests. The mental health counselor stated that she referred the applicant's spouse to therapists. The third report, a psychological evaluation from another mental health counselor, dated July 10, 2014 and submitted on appeal, states that the applicant's spouse has a long history of depression and currently experiences many symptoms of depression. The report indicates that the applicant's ongoing financial and physical support has helped his spouse navigate and cope with symptoms of depression and has helped reduce her feelings of worthlessness and suicidal thoughts. The record has established that the applicant's spouse is emotionally dependent on the applicant such that separation from him would cause her to experience hardship.

Counsel further contends that the applicant's spouse suffers from serious physical health problems. Medical documentation in the record indicates that she is morbidly obese and she suffers from pre-diabetes. A medical report dated July 21, 2014, indicates that morbid obesity is a chronic condition, and the nurse practitioner recommended that the applicant's spouse exercise regularly and referred her to a nutritionist. The nurse practitioner noted that lab results indicated that there are no underlying physiologic causes to explain her weight gain, and that weight gain can be caused by psychological factors. With respect to the applicant's spouse's pre-diabetic condition, the nurse practitioner stated that a pre-diabetic person should have the resources and opportunity to focus efforts on healthy eating habits and daily exercise.

Counsel also contends that the applicant's spouse would experience financial hardships if the applicant's waiver application is not approved, as she is dependent upon the applicant for economic support. Counsel states that the applicant's employment is the family's sole source of income, and that the family made the conscious decision for applicant's spouse to stay at home to take care of their child. The record indicates that the applicant's spouse received training as a certified nursing assistant (CNA), and counsel states that she is licensed as a CNA in Oregon, but not licensed in the state of Washington, where she currently resides. Counsel submits a detailed affidavit which indicates that the applicant's spouse would have to be licensed in the state of Washington to gain employment as a CNA, that a re-registration for out-of-state licenses is available but requires the

¹ The Field Office Director stated in the decision of May 27, 2014, that the license for this mental health counselor was expired as of September [REDACTED] and that therefore little weight was afforded to the declaration. On appeal, the applicant submitted a verification of credential statement from the Department of Health, State of Washington, dated June [REDACTED] verifying that the mental health counselor license for this practitioner was valid through September [REDACTED] with an initial issues date of August [REDACTED]. According to the current provider credential search on the Website of the Washington State Department of Health, the most recent license for this mental health counselor was issued on September [REDACTED], and expires on September [REDACTED].

applicant to go through an official CNA licensing program again, and that most positions available require previous work experience.

In addition, counsel submits evidence regarding the current outbreak of the Ebola virus in Sierra Leone, including an October 14, 2014 warning to avoid non-essential travel to that country from the U.S. Centers for Disease Control. The applicant's spouse submits an affidavit regarding the dangers her family would face if they were to go to Sierra Leone under these conditions, indicating the fears she has over the applicant's risk of contracting Ebola if he were to return to Sierra Leone.

The record reflects that the cumulative effect of the emotional, psychological, and financial hardships that the applicant's spouse would experience due to her husband's inadmissibility, in particular her concern for his well-being in light of the Ebola outbreak in Sierra Leone, rises to the level of extreme. We thus conclude that were the applicant's spouse to remain in the United States without the applicant due to his inadmissibility, the applicant's spouse would suffer extreme hardship.

With respect to relocation, we note that the applicant's spouse was born in the United States and has resided in the United States for her entire life. There is nothing in the record to show that the applicant's spouse has ever been to Sierra Leone, and she claims she is unfamiliar with the language and customs of that country.

Counsel contends that healthcare and educational systems in Sierra Leone are inadequate and economic conditions there are poor. Counsel further states that the applicant's spouse would have difficulty obtaining proper treatment for her psychological and medical conditions and submits country conditions information to support these contentions.

In addition to evidence submitted by counsel regarding the current outbreak of the Ebola virus in Sierra Leone, on August 21, 2014, the U.S. Department of States issued a travel warning for Sierra Leone, warning U.S. citizens against non-essential travel to Sierra Leone, and ordered the departure of family members residing with Embassy staff in [REDACTED] following a review of health conditions and limited availability of medical evacuation options. *See Sierra Leone Travel Warning, U.S. Department of State*, dated August 21, 2014. The record indicates that the applicant's spouse and child would suffer hardship and face a significant risk of contracting Ebola if they were to relocate to Sierra Leone.

Based on the evidence in the record, the applicant has established that his spouse would suffer hardship beyond the common results of removal if she were to relocate to Sierra Leone to reside with the applicant.

Thus, the record establishes that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to such terms, conditions and procedures as he may by regulations prescribe. 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 . . . 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). We 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 Field Office Director found that the applicant did not warrant a favorable exercise of the Secretary's discretion for approval of the waiver, citing several factors, including the applicant's misrepresentation to gain admission to the United States, his presentation of a false birth certificate, and his attempt to conceal his arrest record by indicating on his Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485) that he had never been arrested.

Counsel states that the applicant used a false passport to enter the United States as he was fleeing a civil war in Sierra Leone to seek shelter in the United States. In regard to the birth certificate, the applicant states that he obtained the birth certificate in a refugee camp in 2000 and does not dispute that the certificate was not issued at the time of his birth. He claims that he was not literate at the time he received the certificate and did not realize that it contained an error in his date of birth. Counsel contends that because the birth certificate was not issued at the time of his birth and contains an error does not establish that the applicant engaged in any fraud.

With respect to the arrests of the applicant, counsel states that the applicant completely and timely complied with USCIS's request to provide documents relating to his arrests. We note that the applicant was never convicted of the charges against him.

The favorable factors in this matter are the extreme hardships the applicant's U.S. citizen spouse and child would face if the applicant were returned to Sierra Leone, regardless of whether she

accompanied him or remained in the United States, the extreme hardships associated with the applicant returning to Sierra Leone in relation to the current Ebola outbreak, the fact that the applicant has resided in the United States for over 13 years, and letters of reference on his behalf. Although the record indicates that the applicant was arrested on three occasions, there is no evidence that the applicant has ever been convicted of any crimes, and his last arrest was in [REDACTED]

The unfavorable factors in this matter include the applicant's misrepresentation to enter the United States and his failure to disclose his arrest record when he initially filed his application to adjust status.

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

ORDER: The appeal is sustained.