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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



H6

Date: **APR 24 2012** Office: ACCRA, GHANA



IN RE: Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Field Office Director, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of his last departure from the United States. The applicant is married to a United States citizen and the father of two lawful permanent resident stepchildren. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with his spouse and stepdaughters.

The Acting Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Acting Field Office Director*, dated July 23, 2008.

On appeal, the applicant, through counsel, contends that United States Citizenship and Immigration Services (USCIS) "abused its discretion in denying the I-601 waiver," "misapplied the applicable case law," and failed to consider the relevant factors in the aggregate. *Form I-290B*, dated August 22, 2008.

The record includes, but is not limited to, counsel's appeal brief and a brief in support of the Form I-601, statements from the applicant's wife, letters of support for the applicant and his wife, photographs, a psychological evaluation of the applicant's wife, employment documents for the applicant and his wife, financial documents, household and utility bills, and documents pertaining to the applicant's removal proceeding. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-

....

- (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

- (v) Waiver.-The [Secretary] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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 of Immigration Appeals (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 the present application, the record indicates that the applicant entered the United States on May 21, 1992, on a B-2 nonimmigrant visa. From 1992 to 2003, the applicant filed multiple applications to legalize his status with the immigration court and USCIS. However, on September 14, 2004, an immigration judge denied the applicant's motion to reopen and reinstated her decision of June 26, 1997, ordering the applicant removed from the United States. After a subsequent motion to reopen based on ineffective assistance of counsel was denied, the applicant departed the United States on December 30, 2007.

The applicant accrued unlawful presence from October 29, 2004, the day after the immigration judge's decision, until December 30, 2007, when he departed the United States. The applicant is attempting to seek admission into the United States within ten years of his December 30, 2007 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking admission within 10 years of his departure from the United States. The applicant does not contest his inadmissibility.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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. The record contains references to hardship the applicant's stepchildren would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's children as a factor to be considered in assessing extreme hardship. Hardship to the applicant or his stepchildren 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).

In his appeal brief dated September 18, 2008, counsel states there is a "very high level of poverty in Sierra Leone," and current country conditions also reflect "significant violence," "widespread government corruption," "sanitary conditions [that] are almost nonexistent," and a health situation that is "execrable and appalling." The applicant submitted various country-conditions documents on Sierra Leone that support counsel's assertions. The AAO notes that according to the U.S. Department of State Sierra Leone Country Specific Information report dated December 21, 2010, poverty in Sierra Leone

“has led to criminality” and “[m]edical facilities...fall critically short of U.S. and European standards.” Counsel states the applicant’s wife is “worried about [the] overall living conditions in Sierra Leone,” including widespread violence against women and corruption. In a statement dated December 18, 2007, the applicant’s wife states she is “terrified about the mere idea of having to return to live in Sierra Leone and subject [her] two daughters to live in an extremely poor country [where] their school and career opportunities will be all but destroyed.” The AAO acknowledges that the applicant’s stepdaughters may suffer some hardship in Sierra Leone; however, they are not qualifying relatives in this case. Additionally, the AAO notes that the applicant’s stepdaughters are adults and the record does not establish that they would have to return to Sierra Leone.

In his brief in support of the Form I-601 dated January 10, 2008, counsel claims that the applicant’s wife could not find employment in Sierra Leone to support herself, her children, and the applicant. The applicant’s wife states she built her career in the United States in banking, and she would be unable to do that in Sierra Leone. Counsel claims that other than her sister, the applicant’s wife has no ties to and no one to rely on in Sierra Leone. Additionally, counsel states the applicant’s wife is undergoing fertility treatments in the United States.

The AAO acknowledges that the applicant’s wife is a U.S. citizen and that she has been residing in the United States for many years. Based on the record as a whole, including her health and safety concerns in Sierra Leone, minimal ties to Sierra Leone, poor employment prospects, and medical issues, the AAO finds that, considering her hardship in the aggregate, the applicant’s spouse would suffer extreme hardship if she were to relocate to Sierra Leone to be with the applicant.

However, the record fails to establish extreme hardship to the applicant’s wife if she remains in the United States. The applicant’s wife states she relies on the applicant “for moral, emotional, and financial support.” In a psychological evaluation dated April 26, 2007, [REDACTED] reported that the applicant’s wife “is struggling with mild to moderate symptoms of depression and anxiety,” and separation from the applicant puts her “at a very high risk for an intensification of her reactive mixed anxiety and depression.” [REDACTED] indicates that the applicant’s wife is dependent on the applicant for emotional support, especially since she “experienced significant losses in the past, including her parents and her first husband.” The AAO acknowledges that the applicant’s wife may be experiencing emotional difficulties in being separated from the applicant. However, while it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished his wife’s emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible.

The applicant’s wife states the applicant is a “father figure” to her two daughters, he has been a role model, and he “attends to their every need like any father would do.” The record establishes that the applicant’s wife adopted her two nieces, who are currently 23 and 24 years old, from Sierra Leone. The AAO acknowledges that the applicant’s stepchildren may be suffering hardship in being separated from the applicant; however, as noted above, they are not qualifying relatives, and the applicant has not shown that hardship to his stepchildren has elevated his wife’s challenges to an extreme level.

Counsel states the applicant's wife needs the applicant's "financial contribution to her household" to cover their expenses. The applicant's wife states their monthly household expenses "are between \$4,300 and \$5,000." Counsel states the applicant's wife earns \$11.00 an hour working at Macy's, and with this wage supports herself, her daughters, and will need to support the applicant. Though counsel claims that the applicant's wife is sending her two daughters to college, and she is paying the applicant's debts for which "she is liable," the record does not include evidence of these financial obligations. Counsel states the applicant's wife's sister currently provides room and board to the applicant in Sierra Leone; however, "they cannot afford to keep doing that for much longer." The AAO notes that no evidence has been submitted establishing that the applicant must reside with his sister-in-law or that he needs his wife's support because he cannot support himself. Further, the applicant has submitted no evidence to establish that he has been unable to obtain employment in Sierra Leone and thereby financially assist his wife from outside the United States. The AAO finds the record to include some documentation of the family's income and expenses; however, this material offers insufficient proof that the applicant's wife has been unable to support herself in the applicant's absence. Additionally, the applicant has not distinguished his wife's financial challenges from those commonly experienced when a family member remains in the United States alone.

The depth of concern over the applicant's inadmissibility is neither doubted nor minimized, however, Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.3d 465, 468 (9th Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch, supra* (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship), *Matter of Shaughnessy, supra* (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury...will the bar be removed." *Matter of Ngai, supra* at 246. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

Although the applicant has demonstrated that his spouse would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being

separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch, supra* at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.