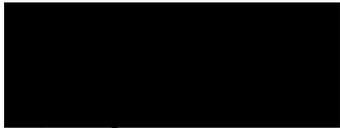


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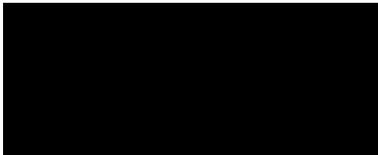
Date: AUG 31 2005

IN RE:



PETITION: 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 PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Philadelphia District Office. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted and the previous decision of the AAO will be affirmed.

The applicant is a native and citizen of Ghana who 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 having procured admission into the United States by fraud or willful misrepresentation on June 29, 1991. The applicant married a citizen of the United States on May 27, 1993 and is the beneficiary of an approved Petition for Alien Relative (EAC-94-016-52645.) The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to adjust his status to permanent resident and remain in the United States with his spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated March 21, 2000. The decision of the district director was affirmed on appeal by the AAO. *Decision of the AAO*, dated October 28, 2003.

On motion, counsel asserts that there are changed facts in the application, as the health of the applicant's U.S. citizen spouse has deteriorated, in part due to a work-related accident that has left her disabled and unable to work. *Brief in Support of Motion* at 14-15, dated November 25, 2003.

In support of these assertions, counsel submits a brief; an affidavit from the applicant's spouse; copies of documentation of the applicant's spouse's medical treatment and inability to work; a 2003 country conditions report on Ghana from the U.S. Department of State, and; copies of documentation of the applicant's and his spouse's medical insurance. The entire record was considered in rendering this decision.

8 C.F.R. § 103.5(a)(2) (2002) states in pertinent part:

A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

On motion, the applicant has shown that his spouse's health has deteriorated since the AAO's prior decision. Specifically, the applicant's spouse was injured in a fall at her place of employment, and a doctor subsequently determined that she is disabled. *Statement from Applicant's Spouse Submitted on Motion*, dated November 25, 2003; *Insurance Form Executed by Dr. Richard Buonocore, M.D.*, dated September 3, 2003. The documented deterioration of the applicant's spouse's health constitutes a new fact. Thus, the motion will be granted, and the proceedings will be reopened and a new decision entered.

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

- (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.

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.

The record reflects that the applicant procured admission into the United States by presenting a fraudulent passport and making a willful misrepresentation of a material fact. Specifically, upon his entry the applicant presented a passport that contained his photograph but the name and biographic information of another individual. The applicant claimed the identity of the person named in the document and falsely represented that the included visa was issued to him. Accordingly, the applicant was found inadmissible under section 212(a)(6)(C)(i) of the Act.¹ The applicant does not contest his inadmissibility.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's wife. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise favorable discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

Counsel asserts that the applicant's spouse will suffer extreme hardship if the applicant is prohibited from remaining in the United States. Counsel contends that the applicant's spouse suffers from numerous health conditions, including disc disease, high blood pressure, diabetes, migraines, and irritable bowel syndrome. *Brief in Support of Motion* at 14. Counsel states that the applicant's spouse had breast and back operations in

¹ As noted by the AAO in its prior decision, the record reflects that the applicant submitted a forged birth certificate to Citizenship and Immigration Services (CIS) as part of an application to adjustment his status to permanent resident (Form I-485.) Such act may constitute an additional violation of section 212(a)(6)(C)(i) of the Act.

1997 and 1999, and a hysterectomy in 1998. *Id.* at 15. The applicant's spouse indicates that she was injured in a fall at her place of employment on August 14, 2002, and that she received surgery in December 2002 and January 2003. *Statement from Applicant's Spouse Submitted on Motion* at 1. Subsequently, in completing an insurance form on September 3, 2003, a doctor indicated that the applicant's spouse is "totally disabled from working at any occupation or type of employment (full or part time)" *Insurance Form Executed by Dr. Richard Buonocore, M.D.* On the same form, the doctor indicated that he expects improvement in the applicant's spouse's disability. *Id.* Counsel notes that the applicant's spouse takes seven different medications. *Brief in Support of Motion* at 15. Counsel asserts that the AAO failed to consider a letter from a doctor that was submitted with the prior appeal, which lists health problems for which the applicant's spouse receives treatment. *Letter from Dr. Joseph M. Valloti, M.D.*, dated April 18, 2000.

Counsel asserts that, due to her disability, the applicant's spouse is dependent on the applicant for financial support. *Brief in Support of Motion* at 15. The applicant's spouse states that she maintains health insurance through the applicant, and that she is unable to pay an increased premium for her prior insurance. *Statement from Applicant's Spouse Submitted on Motion* at 2. The applicant's spouse further states that the applicant served as her caretaker when she was bedridden. *Id.*

Counsel discusses the facts of the present matter in light of the criteria identified in *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999). Counsel provides that the applicant and his spouse were married at a time when the applicant was not experiencing difficulty with his immigration status, and thus his spouse did not have continuing notice or expectation that removal was possible. *Brief in Support of Motion* at 2-5. Counsel asserts that the applicant's spouse will suffer economic hardship should the applicant return to Ghana, as the applicant is now their sole source of income. *Id.* at 6. Counsel states that the prior AAO decision relies on outdated financial documentation that erroneously suggests that the applicant's spouse is the couple's primary income earner. *Id.* Counsel indicates that the applicant's spouse receives worker's compensation, and that "[s]he is not expected to recovery her ability to earn a living." *Id.* at 7.

Counsel contends that the AAO failed to give proper weight to a psychological evaluation conducted by a mental health professional, and that the evaluation explains in detail the traumatic life history of the applicant's spouse, and the negative psychological consequences she would suffer should the applicant be compelled to depart the United States. *Id.* at 7-11. The applicant's spouse explains that she depends on the applicant for emotional support. *Statement from Applicant's Spouse Submitted on Motion* at 2.

Counsel asserts that relocating to Ghana would cause substantial hardship to the applicant's spouse, as she is a native-born American, she has no ties outside the United States, and she has no meaningful knowledge of or experience with Africa or Ghana. *Brief in Support of Motion* at 11-12. Counsel suggests that the age of the applicant's spouse, entering her 50s, would make it more difficult to adapt to a new country and culture. *Id.* at 12-13. Counsel further contends that conditions in Ghana have deteriorated over the previous years, which poses additional dangers for the applicant's spouse should she relocate there. *Id.* at 13-14. The applicant's spouse states that she will not be able to obtain adequate health care in Ghana. *Statement from Applicant's Spouse Submitted on Motion* at 2.

Upon review, the applicant has not sufficiently documented that his spouse will suffer extreme hardship should he depart the United States. The evidence of record shows that the applicant's spouse suffers from

various health conditions. However, the history, severity, and present status of her conditions have not been shown with adequate supporting documentation. The applicant's spouse states that she suffered injury in a workplace accident on August 14, 2002, and she suggests it led to her present disability. However, the record lacks a sufficient description of this accident such that the AAO can comprehend the resulting injury and its effect on her ability to conduct her daily life. The applicant's spouse reports that she subsequently had surgery in December 2002 and January 2003, implying that such procedures were the result of her accident. However, the applicant has not provided any medical records or independent evidence regarding the January 2003 surgery. Thus, the AAO cannot determine if this surgery occurred or what was the purpose. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant provided discharge documentation to show that his spouse had surgery in December 2002, namely a lumbar laminectomy. Documentation of a consultation on August 15, 2002 with the health center that performed the surgery reflects that the applicant's spouse suffered from a central extrusion, also known as a herniated disc. Thus, it appears that the applicant's spouse received a lumbar laminectomy in December 2002 to correct her herniated disc. Yet, there is no medical documentation of follow-up care, or clear indications from a medical professional regarding the success of the procedure or expected recovery of the applicant's spouse.

The applicant submits an insurance form that was completed by his spouse's doctor on September 3, 2003, in which the doctor stated that the applicant's spouse was "totally disabled from working at any occupation or type of employment (full or part time) . . ." *Insurance Form Executed by Dr. Richard Buonocore, M.D.* The doctor did not describe the reason for the disability. On the same form, the doctor indicated that he expected improvement in the applicant's spouse's disability, yet he failed to discuss the level of improvement expected, whether he anticipates that the applicant's spouse will be able to return to work, and if so, when he anticipates that the applicant's spouse will be able to return to work. Thus, the record does not contain adequate documentation for the AAO to determine the nature and duration of the applicant's spouse's disability. It is noted that the applicant submits medical records showing that, following his spouse's workplace accident, his spouse received treatments for pain on August 20, September 4, and September 24, 2002. The record does not reflect that such treatments were required after her surgery on December 16, 2002. Counsel's assertion that the applicant's spouse is not expected to recover her ability to work is not supported by documentary evidence. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. The statements of counsel on appeal or in a motion are not evidence and thus are not entitled to any evidentiary weight. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

The applicant submits an insurance form completed by his spouse on July 24, 2003, in which she stated that she began receiving worker's compensation on August 15, 2002. The applicant has not provided documentation to show whether his spouse continues to receive worker's compensation or disability pay, or to show her current economic requirements. While counsel asserts that the AAO relied on outdated financial information in rendering the prior decision, the applicant fails to submit sufficient recent financial documentation on appeal such as 2002 federal tax returns, documentation of bills, and bank statements. The record reflects that the applicant's spouse was covered under the applicant's health insurance policy as of

November 11, 2003, yet the applicant has not shown that his spouse would be unable to afford health insurance utilizing her current means. Thus, the AAO is unable to determine whether the applicant's spouse has sufficient resources to meet her financial needs without the assistance of the applicant. It is noted that the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

Further, on the insurance form of July 24, 2003, the applicant's spouse stated that her daily activities included "light exercise." The applicant has not provided an assessment of his spouse's current physical condition or ability, such that the AAO can determine whether she requires ongoing assistance or nursing care. The fact that the applicant's spouse routinely engaged in light exercise as of July 24, 2003 suggests that she can perform daily functions without assistance.

The applicant provides a letter, dated April 18, 2000, in which Dr. [REDACTED] lists various conditions for which he was treating the applicant's spouse. Counsel asserts that this letter was submitted with the prior appeal, and that the AAO failed to consider it. However, a review of the record reveals that this letter was submitted for the first time in support of the present motion, and thus it was not previously available to the AAO. The letter consists of four short sentences, and fails to clearly discuss the nature of the applicant's spouse's health problems, the success of treatment, or the effect the conditions have on her ability to perform daily functions. It is noted that the applicant's spouse was employed as of the date of the letter, thus the conditions did not prevent her from working. The single new condition consists of her back injury. However, as discussed above, the applicant has failed to clearly document the effect his spouse's back injury has had on her present ability to function.

Counsel contends that the AAO failed to give proper weight to a psychological evaluation conducted by a mental health professional. However, the evaluation, dated April 18, 2000, is of limited use in the present proceeding due to the passage of over three years and new events such as the applicant's spouse's workplace accident. The applicant has provided no evidence that his spouse received or required follow-up evaluation from a mental health professional. While the evaluation is helpful in providing an understanding of the background and challenges of the applicant's spouse, it does not show that, should the applicant depart the United States, his spouse will suffer emotional consequences beyond those ordinarily experienced by families of those who are deported.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant if she chooses to remain in the United States. However, her situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. As previously stated by the AAO, U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme

hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported.

Counsel asserts that relocating to Ghana would cause substantial hardship to the applicant's spouse. The AAO acknowledges that adapting to a new culture would pose significant challenges to the applicant's spouse. However, counsel's assertion that conditions are deteriorating in Ghana is not supported by the evidence of record. The single document submitted, a consular information sheet from the U.S. Department of State, is insufficient to demonstrate a pattern of declining or increasing risk for the applicant's spouse. It is noted that many of the potential dangers that counsel has highlighted in the document are present in the United States, such as traffic accidents, armed robbery, and petty theft. The availability of adequate medical care in the country to which a qualifying relative would relocate is a significant consideration in determining whether the relative will suffer extreme hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-566. However, while the consular information sheet states that medical facilities are limited in Ghana, the applicant has failed to show that his spouse would be unable to obtain required medical care or prescription medications.

Based on the foregoing, the applicant has not shown that his spouse's health status requires his care and financial support. Nor has the applicant established that his spouse's condition will be unusually exacerbated due to his inadmissibility. The applicant has not shown that his departure from the United States will create economic or emotional hardship for his spouse that is unusual or beyond that which would normally be expected upon deportation. Thus, the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) 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 motion will be granted and the prior decision of the AAO will be affirmed.

ORDER: The motion is granted. The decision of October 28, 2003 dismissing the appeal is affirmed.