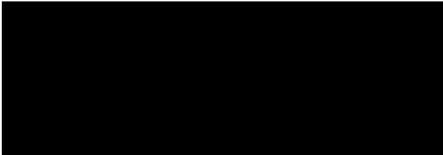


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FILE:



Office: ACCRA, GHANA

Date:

MAR 23 2001

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Officer in Charge, Accra, Ghana, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ghana 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), for attempting to procure a visa by fraud or willful misrepresentation. The applicant is the spouse of a U.S. citizen. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with her spouse.

The officer in charge concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Officer in Charge*, dated March 3, 2005.

The record reflects that, on September 24, 1998, the applicant filed An Application for a Nonimmigrant Visa (OF-156). The application indicated that the applicant was engaged to [REDACTED], a U.S. citizen, who would support her visit to the United States. On April 20, 2000, [REDACTED] filed a Petition for Alien Fiancee (Form I-129F) on behalf of the applicant, which was approved on June 3, 2000. The applicant filed a Form I-156 based on the approved Form I-129F. The applicant failed to indicate on the Form I-156 that she had been previously engaged to a U.S. citizen or that she had previously applied for a nonimmigrant visa. During her nonimmigrant visa interview the applicant refused to admit to filing a prior nonimmigrant application or to having a prior fiancé, despite being given the opportunity to correct the Form I-156. The Form I-156 was denied pursuant to section 212(a)(6)(C)(i) of the Act, for misrepresentation of a material fact in order to obtain a visa. On January 16, 2001, the applicant married [REDACTED] in Ghana. On April 26, 2001, [REDACTED] filed a Petition for Alien Relative (Form I-130) on behalf of the applicant, which was approved on October 15, 2001. On April 18, 2002, the applicant filed an Application for Immigrant Visa (Form DS-230) based on the approved Form I-130. The applicant then filed the Form I-601 with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her spouse.

On appeal, counsel contends that [REDACTED] as a U.S. citizen, is constitutionally guaranteed the right to a life of happiness and human freedoms which includes the freedom to chose a spouse and to build a life with that spouse, raising a family and enjoying the freedoms and prosperity enshrined in the constitution. Counsel asserts that the separation of [REDACTED] from the applicant is wreaking extreme emotional havoc and mental anguish that is tantamount to very cruel and unusual punishment. *See Counsel's Brief*, dated March 24, 2005. Constitutional issues are not within the appellate jurisdiction of the AAO, therefore counsel's contention that the separation of [REDACTED] and the applicant violates [REDACTED]'s constitutional rights will not be addressed in the present decision.

Alternatively, counsel asserts that the AAO should exercise its discretion to approve the waiver. *See Counsel's Brief*, dated March 24, 2005. In support of his contentions, counsel submitted the referenced brief, and copies of wire transfers between [REDACTED] and the applicant. The entire record was reviewed in rendering a decision in this case.

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.

....

- (iii) Waiver authorized. – For provision authorizing waiver of clause (i), see subsection (i).

Section 212(i) of the Act provides:

- (1) 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 officer in charge based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the applicant's attempt to obtain a visa by fraud or willful misrepresentation of a material fact. On appeal, counsel does not contest the officer in charge's determination of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Since an applicant's qualifying relative is not required to reside outside of the United States as a result of denial of the applicant's waiver request, an applicant must establish that the qualifying relative would suffer extreme hardship whether they remained in the United States or accompanied the applicant to the foreign country of residence.

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The record reflects that [REDACTED] is a U.S. citizen by birth. The applicant and [REDACTED] do not have any children. The record indicates that the applicant and [REDACTED] are in their 30's. There is no evidence that [REDACTED] has any health concerns.

Counsel asserts that the continued separation of [REDACTED] and the applicant is wreaking extreme emotional havoc and mental anguish. [REDACTED], in his affidavits, asserts that he and the applicant need to reside together. He states that he is a full-time student who does not wish to interrupt his studies by taking up part-time employment. He states that he requires the applicant's presence in the United States to ensure her full-time employment and to help in planning their future together with no forced separation or undue extreme burden or extreme hardship. He states that he needs the applicant to enable them to build a variable, strong and united family. Finally, he states that if he is separated from the applicant it will result in serious emotional and financial hardship.

Financial records indicate that, in 2003, [REDACTED] was employed full-time, earning approximately \$20,800 per year. The record shows that, even without assistance from the applicant, [REDACTED] in the past, has earned sufficient income to exceed the poverty guidelines for his family. *Federal Poverty Guidelines*, <http://aspe.hhs.gov/poverty/figures-fed-reg.shtml>. Although the record includes copies of eight money transfers sent to the applicant by [REDACTED] between February 2002 and February 2004, neither counsel nor [REDACTED] assert that the applicant is being supported by these transfers or even requires financial support from [REDACTED]. Accordingly, the record does not establish that the applicant's continued inadmissibility would result in a financial loss to [REDACTED] that would constitute extreme hardship, even when combined with the emotional hardship described below.

There is no evidence in the record to suggest that [REDACTED] suffers from a physical or mental illness that would cause him to suffer hardship beyond that commonly suffered by aliens and families upon removal. While it is unfortunate that [REDACTED] would experience distress and some level of depression as a result of his separation from the applicant, this is also not a hardship that is beyond those commonly suffered by aliens and families upon removal.

Counsel and [REDACTED] do not assert that [REDACTED] would suffer extreme hardship if he joined the applicant in Ghana. The AAO is, therefore, unable to find that [REDACTED] would suffer extreme hardship should he choose to join the applicant in Ghana. Finally, as previously noted, [REDACTED] is not required to reside outside of the United States as a result of denial of the applicant's waiver request and, as discussed

above, [REDACTED] would not experience extreme hardship if he remained in the United States without the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] would face the unfortunate, but expected disruptions, inconveniences, and difficulties that arise whenever a spouse is removed from the United States. 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, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, 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.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (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*, 12 I&N Dec. 810 (BIA 1968) (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*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1186(i). 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 proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.