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20 Massachusetts Avenue, NW, Rm. 3000
Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE: [REDACTED]

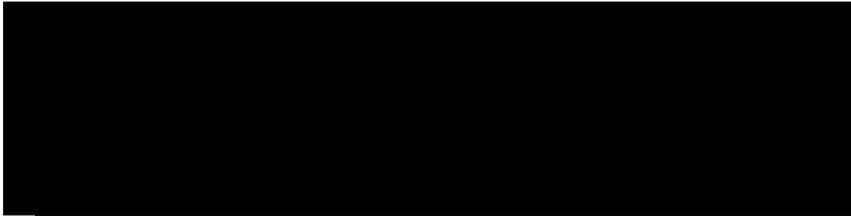
Office: BALTIMORE, MD

Date: MAY 24 2007

IN RE: [REDACTED]

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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant, [REDACTED] 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 willfully misrepresenting a material fact (his true identity) in order to gain entry into the United States. The applicant is the husband of [REDACTED], a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i). The District Director concluded that the applicant failed to establish extreme hardship to his qualifying relative, his wife, and denied the Application for Waiver of Grounds of Excludability (Form I-601). *Decision of the District Director*, dated October 1, 2003. On appeal, counsel submits additional evidence.

The AAO will first address the finding of inadmissibility 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).

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 chapter is inadmissible.

....

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

Section 212(i) of the Act provides:

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 Attorney General 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 committed fraud by entering the United States on June 10, 1988 using another person's passport. *Decision of the Interim District Director for Service*, dated October 1, 2003. The district director was correct in finding the applicant inadmissible under section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i).

The AAO will now address the finding that the grant of a waiver of inadmissibility is not warranted here.

The applicant seeks a waiver of 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 to the applicant and his children is not a permissible consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relative here is 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 discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 564 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors that are relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 564. The BIA indicated that these factors relate to the applicant's "qualifying relative." *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

In the denial letter the district director stated the following. The submitted evidence failed to establish extreme hardship to the applicant's spouse if the waiver application were denied. Evidence was not submitted to establish that the applicant's wife would be forced to terminate her employment as a registered nurse if the applicant were not available to take care of the two children. The evidence did not show that his wife would suffer extreme hardship if she obtained another job. The applicant failed to establish the necessity of the family's financial commitments. The income of the applicant's wife meets the standard of sufficient income for providing for a household size of eleven people.

The record contains several affidavits of [REDACTED]. In the October 25, 2005 affidavit, she makes the following statements. She earns \$55,000 annually; her husband earns \$54,000 annually. Their monthly mortgage is \$1,771.77, with a second mortgage payment of \$243. Their life insurance policy costs \$500 each month; \$15,000 is owed to the Capital One Visa card; \$9,300 is owed to Citibank; \$6,386 is owed to Target; \$6,222.29 is owed for a play set for their children; and \$210 is paid monthly for childcare. Food, gas, electric, clothes for the children, school fees and supplies, phone bills, and home and car maintenance costs are not

included in the family's monthly expenses. They are barely able to pay their bills and without her husband's income she would be submerged in debt. She has two children, a daughter born on November 20, 1999 (seven years of age) and a son born on December 31, 2001 (five years of age). She and her husband work different hours so as to be at home with the children. Once or twice each week they employ [REDACTED] sister for childcare. The children are at a delicate growth age and need their father to continue to be a part of their lives. She has been married to [REDACTED] for seven years and needs him. Her husband has been in the United States for over 17 years. He is a hard worker, providing well for the family. He attends school to obtain a registered nurse license. *Affidavit of [REDACTED] dated October 25, 2005.*

In an undated affidavit, the [REDACTED] states the following. Her parents live in New Bern, North Carolina, and her siblings live on the East Coast. She has frequent contact with her family. She met her husband's family in Ghana. Ghana is not home to her; she did not grow up there and it would be a terrible shock if she lived there. The Ghanaian culture is very different from that of the United States. Ghana has high unemployment and neither she nor her husband could work there. All of her husband's nieces and nephews who have degrees from polytechnic and cannot find work. Her husband's family cannot financially support them in Ghana. The applicant financially supports his mother. Her husband is from Kibi, a small village of 2,000 that had been a gold mining area, but where people are now unemployed. Access to education is very limited and would adversely affect their daughter if she were raised there. After elementary school, one must have enough cash to pay for boarding schools away from Kibi. Her husband pays \$250 each quarter for his sons to attend such a school. The healthcare system in Ghana is extremely basic and would be a negative factor for the family and their daughter. There is no hospital in Kibi and the only clinic is basic and doctors are not available. These quality of life factors would hurt their daughters chance for a decent future.

In a handwritten affidavit, [REDACTED] states that her husband received his licensed practical nurse degree and she obtained her bachelor of science in nursing. Her husband attends school and works full-time. Twice a year she travels to North Carolina to visit her parents and she visits her siblings frequently. The family needs her and her husband's income to meet their financial needs. They pay a mortgage and she sends money to her parents to supplement their income. She has a loving relationship with her husband. They share childcare responsibilities, and her husband teaches the children about his culture. Her work schedule includes changing 12-hour day shifts and changing weekends, and her husband works 8-hour evening shifts and changing weekends. They attend their church twice a month. Her husband loves their children dearly.

In an affidavit dated May 5, 2001 [REDACTED] states that she has student loans and they are paying a mortgage and car payments. Her husband sends money every month to his sons for their financial support, and he pays their quarterly school fees of \$500. He has an obligation to support his mother who is 75 years old and he is the only child who has enough income to be able to help her. They are paying medical bills in the amount of \$4,000 for her hospitalization after a miscarriage. Since they married in 1998, she and her husband have been apart for only 2 days. She depends on him emotionally and financially. She cannot imagine life without her husband, who is her better half. She depends on him on a daily basis and it would be devastating to her if he were not there. Her daughter would be deprived of a father who loves her dearly.

The record contains letters attesting to the applicant's good moral character; invoices; birth certificates; a marriage certificate; income tax records; wage statements (for 2001 reflect \$61,000 income for the applicant

and \$47,738 for his wife); a deed; an installment contract; photographs, and other documentation. In rendering this decision, the AAO has considered the entire record of proceeding.

The AAO acknowledges that it has been held that “the family and relationship between family members is of paramount importance” and that “separation of family members from one another is a serious matter requiring close and careful scrutiny. *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1423 (9th Cir. 1987) citing *Bastidas v. INS*, 609 F.2d 101 (3rd Cir. 1979).

However, the fact that the applicant has U.S. citizen children is not sufficient in itself to establish extreme hardship. The general proposition is that the mere birth of a deportee’s child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In a per curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA’s finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent’s bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *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.

The AAO will now apply the *Cervantes-Gonzalez* factors here in determining extreme hardship to the applicant’s husband. Extreme hardship to the applicant’s wife must be established in the event that she remains in the United States; and in the alternative, that she accompanies the applicant. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record does not establish that the applicant’s wife will endure extreme hardship if she remains in the United States without her husband.

asserts that her family requires a joint income to pay monthly household expenses. She states that she provides a supplemental income to her parents. Based on the submitted evidence, the family presently relies on the income of the applicant and his wife to meet monthly household expenses. However, 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.

The have a five-year-old son and a seven-year-old daughter. states that she and her husband accommodate their work schedules so they can share in the responsibilities of raising their children and that her children are at a delicate growth age and need their father to continue to be a part of their lives.

██████████ is employed as a nurse and her husband is employed as a licensed vocational nurse. She works 12-hour shifts and her husband works 8-hour shifts. Once or twice each week they employ ██████████ sister for childcare. ██████████ indicates that her husband and children have a close relationship, and she indicates that she has a loving relationship with her husband.

The AAO finds that the submitted evidence of hardship to be endured by ██████████ does not rise to the level of extreme hardship as contemplated by the Act. The applicant's wife will undoubtedly experience emotional hardship if separated from her husband. The AAO is mindful of and sympathetic to the emotional hardship that results from separation from a loved one, and it notes that ██████████ is concerned about the emotional impact of the separation of her children from their father. **However, the AAO finds that ██████████ situation, if she remains in the United States, 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.** Separation from the applicant is a common result of deportation and is insufficient to prove extreme hardship, which is defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See, e.g. Hassan v. INS, supra, and Perez, supra.* It is noted that ██████████ has a sister who is available to assist in the care of her two children.

The applicant must also establish that his wife would endure extreme hardship in the event that she joined him in Ghana. The AAO finds that not enough evidence was produced to make out a claim of extreme hardship to the applicant's wife if she joins him in Ghana.

The conditions of the country in which the alien and his or her family will be returning are relevant in determining hardship. However, economic hardship claims of not finding employment in Ghana and not having proper medical care benefits do not reach the level of extreme hardship. General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien. *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996), citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir.1985). In a per curiam decision, *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975), the Fifth Circuit stated that difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship. "Second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa, supra.* In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), the Ninth Circuit upheld the BIA's finding that the petitioners would suffer some measure of hardship on vacating and selling their home, but determined that this would not constitute "extreme hardship and that hardship in finding employment in Mexico and in the loss of their group medical insurance did not reach "extreme hardship." As previously stated, the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang, supra.*

However, in *Carrete-Michel v. INS*, 749 F.2d 490, 493 (8th Cir. 1984), the court stated that the BIA improperly characterized as mere "economic hardship" Carrete-Michel's claim, which was supported by evidentiary material, that he would be completely unable to find work in Mexico. The court stated that "[a]lthough economic hardship by itself cannot be the basis for suspending deportation, *Immigration and Naturalization Service v. Wang*, 450 U.S. at 144, 101 S.Ct. at 1031, we agree with the Ninth Circuit that there is a distinction between economic hardship and complete inability to find work. *Santana-Figueroa*, 644 F.2d at 1356-57."

The claim of economic hardship stemming from inability to find work in Ghana is not supported by evidentiary material. No evidence was submitted to support the assertion that the applicant and his wife would not be able to gain employment in Ghana. The submitted photographs of Ghana depicting buildings are not sufficient to demonstrate that the Asares will not be able to find employment there. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)). It is noted that [REDACTED]'s father is deceased and his mother, who is living, resides in Accra, Ghana. *Form G-325*. **Accra is the capital of Ghana.** See, *Wikipedia Encyclopedia*, www.wikipedia.org.

[REDACTED]'s hardship claims regarding health care are not persuasive in establishing extreme hardship. Loss of group medical insurance and "second class" medical facilities in foreign countries are not considered "extreme hardship." See *Carnalla-Munoz*, *supra*, and *Matter of Correa*, *supra*.

The fact that economic and educational opportunities for the Asare's children are better in the United States than in the alien's homeland does not establish extreme hardship. See, e.g., *Matter of Pilch*, 21 I&N Dec. 627, 632 (BIA 1996), citing *Matter of Kim*, 15 I&N Dec. 88 (BIA 1974) and *Ramirez-Durazo v. INS*, 794 F.2d 491 (9th Cir. 1986) (stating that the disadvantage of reduced educational opportunities is insufficient to constitute extreme hardship). Thus, the claim of reduced educational opportunities for the Asare children is unpersuasive in establishing extreme hardship.

[REDACTED] need to acculturate to life in Ghana and her separation from her parents and siblings do not establish extreme hardship. *Matter of Pilch*, *supra* at 631, states that separation from a family member or cultural readjustment do not constitute extreme hardship.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(i) of the Act, 8 U.S.C. § 1182(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(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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.



ORDER: The appeal is dismissed.