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U.S. Citizenship
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Services

H2

FILE:

Office: ATLANTA DISTRICT OFFICE

Date: MAY 25 2007

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the
Immigration and Nationality Act (INA), 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 waiver application was denied by the District Director, Atlanta, Georgia. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen and or reconsider. The motion will be granted, the previous decisions of the district director and the AAO will be affirmed and the application denied.

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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States and reside with his U.S. citizen wife, child and stepchild. 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 Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated February 8, 2005.

The applicant appealed this decision to the AAO on March 9, 2005. In the absence of any brief or evidence supporting a hardship claim, the AAO summarily dismissed the appeal on October 10, 2006. The AAO was later provided with a previously filed Supplement to Form I-290 and supporting documents and, on that basis, has granted the applicant's Motion to Reopen and/or Motion to Reconsider, dated November 6, 2006, for consideration of the record as supplemented.

In support of the applicant's claim of extreme hardship, counsel submits, *inter alia*, a brief; affidavits from the applicant and his spouse, in which they state that the applicant is the primary financial support of the family as well as the emotional support for his wife and their children, and that the applicant's wife and children would be devastated if separated from the applicant; letters of support from friends and the couple's pastor, attesting to the applicant's good character and devotion to his wife and children; a psychological evaluation of the applicant's spouse, in which a licensed health care professional concludes that the applicant's wife is highly distressed and overwhelmed by her circumstances, recently unemployed (June 2005), and resisting feelings of panic over the potential loss of her husband, both for herself and her children; family photographs; and U.S. Department of State, *Country Reports on Human Rights Practices – 2004*, for Ghana. The entire record was considered in rendering this decision.

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 shows that the applicant admitted to falsely stating on his visitor visa application that he was married in order to obtain a visa for travel to the United States. As a result of this prior misrepresentation, the applicant was found to be inadmissible. The applicant does not contest this finding.

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. 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-Morales*, 21 I&N Dec. 296 (BIA 1996).

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 applicant 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. In examining whether extreme hardship has been established, 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).

Hardship experienced by the applicant or the applicant’s children due to removal or inadmissibility is not a listed factor in section 212(i) waiver proceedings. However, hardship suffered by the applicant or his children will be considered to the extent that it results in hardship to a qualifying relative in the application, in this case, the applicant’s U.S. citizen wife. *Matter of Recinas, et al.*, 23 I&N Dec. 467, 471 (BIA 2002).

U.S. courts have stated, regarding consideration of a request for suspension of deportation under former section 244(a) of the Act, 8 U.S.C. § 1254(a) (1994), “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give

considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to the Board of Immigration Appeals (BIA)) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted). Separation of family will therefore be given the appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant’s spouse must be established in the event that she accompanies him and resides in Ghana or in the event that she remains in the United States, as she is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

The record reflects that the applicant was born in Ghana in 1969 and came to the United States on a visitor visa in 1998; his wife was born in the United States in 1970. They were married in 2001 in Georgia, where they currently reside; and had a child in 2004; the applicant’s wife has a child from a prior relationship, who was born in 1998. Based on financial records and biographic information in the record, the applicant’s wife earned \$25,800 in 2000; in 2002, the couple filed a joint return showing an income of approximately \$38,000 and their occupations as truck driver and customer service representative; in 2003, the most recent tax year in the record, the applicant filed separately and showed an income of approximately \$36,000. The applicant does not claim to have family members in the United States other than his wife and children; and his wife indicates that her mother lives in Ohio and her father in Alabama. There is no indication that the applicant’s wife has any ties to Ghana, other than the fact that her husband is from there.

The applicant’s wife claims that she and her children will suffer without the emotional and financial support of the applicant, and that if the applicant were forced to return to Ghana, he would not have the same opportunities he has in the United States and he would not be able to support them, and they would not have the financial means to visit him.

The AAO recognizes that the applicant’s wife will endure hardship as a result of separation from the applicant should she choose to remain in the United States with her children. However, her situation, including the understandable distress noted by a psychologist, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. The applicant’s wife may also choose to relocate to Ghana with the applicant to avoid the hardship of separation, though she is not required to do so, and such a move would mean that she and her children would face the challenges of adapting to a new country. The record indicates, however, that the applicant lived and worked in Ghana until he was almost 30 years old and that his parents continue to reside there, indicating that the applicant’s wife would not be without some family or community support if she chose to move to Ghana. The AAO also recognizes that the applicant has been the main financial support for the couple in the last few years and that his wife would suffer the resultant economic consequences of the loss of his current income if he were not allowed to remain and work in the United States. However, the record indicates that the applicant’s wife was employed and earned a living wage before she met the applicant and that the applicant worked as a driver in Ghana before coming to the United States; there is no evidence that they cannot find suitable employment again and support their family whether the applicant’s wife chooses to remain in the United States or move to

Ghana. The record also lacks evidence of the couple's expenses or an explanation of how the applicant's wife covered her expenses in the absence of her husband's financial contribution before they were married. Moreover, 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.

U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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 individuals being deported.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's husband should the applicant be prohibited from remaining in the United States, considered in the aggregate, do not rise to the level of extreme hardship. 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. Here, the applicant has not met that burden. Accordingly, the previous decisions of the district director and the AAO will be affirmed.

ORDER: The motion is granted. The decision of the AAO of October 10, 2006 dismissing the appeal is affirmed, and the application is denied.