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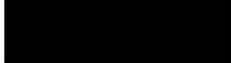
U.S. Citizenship
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Services

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FILE:



Office: ACCRA, GHANA

Date:

FEB 20 2008

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) and Section 212(d)(11) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and § 1182(d)(11)

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Accra, Ghana. The matter 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 sections 212(a)(6)(C)(i) and 212(a)(6)(E) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) and § 1182(a)(6)(E) for having sought to procure admission to the United States through fraud or willful misrepresentation of a material fact, and attempting to assist in the smuggling of another alien into the United States. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

In his decision, the officer-in-charge found the applicant to be ineligible for a waiver of inadmissibility under section 212(a)(6)(E) of the Act and also concluded that she had failed to establish that the refusal of her admission would result in extreme hardship to a qualifying relative, the basis for waiving inadmissibility under section 212(a)(6)(C)(i) of the Act. *Decision of the Officer in Charge*, dated December 5, 2005.

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) of this section.

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.

Section 212(a)(6)(E) of the Act provides in pertinent part:

(i) In general. Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

(ii) Special rule in the case of family reunification. Clause (i) shall not apply in the case of alien who is an eligible immigrant (as defined in section 301(b)(1) of the Immigration Act of 1990), was physically present in the United States on May 5, 1988, and is seeking admission as an immediate relative or under section 203(a)(2) (including under section 112 of the Immigration Act of 1990) or benefits under section 301(a) of the Immigration Act of 1990 if the alien, before May 5, 1988, has encouraged, induced, assisted, abetted, or aided only the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

(iii) Waiver authorized. For provision authorizing waiver of clause (i), see subsection (d)(11) of this section.

Section 212(d) of the Act, 8 U.S.C. § 1182(d), provides in pertinent part:

(11) The Attorney General may, in his discretion for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest, waive application of clause (i) of subsection (a)(6)(E) in the case of any alien lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of removal, and who is otherwise admissible to the United States as a returning resident under section 211(b) and in the case of an alien seeking admission or adjustment of status as an immediate relative or immigrant under section 203(a) (other than paragraph (4) thereof), if the alien has encouraged, induced, assisted, abetted, or aided only an individual who at the time of the offense was the alien's spouse, parent, son, or daughter (and no other individual) to enter the United States in violation of law.

On appeal, counsel asserts that the officer-in-charge erred as a matter of fact and law in finding the applicant inadmissible under sections 212(a)(6)(C) and (E) of the Act. *Form I-290B*, dated January 19, 2006. In addition, counsel asserts that the officer-in-charge erred as a matter of fact and law in finding that the applicant failed to establish that her inadmissibility would cause extreme hardship to her U.S. citizen spouse. *Id.*

The AAO turns first to the officer-in-charge's finding that the applicant is inadmissible under section 212(a)(6)(E) of the Act as an alien who has knowingly encouraged, induced, assisted, abetted or aided another alien to enter or try to enter the United States in violation of U.S. immigration laws. The AAO notes the two consular memoranda in the record, dated January 22, 2002 and April 21, 2003, and the consular notes from a May 17, 2001 interview with the applicant, all of which indicate that numerous inconsistencies in the record led the U.S. embassy in Ghana to conclude that the applicant is subject to the ground of inadmissibility in section 212(a)(6)(E) of the Act. This documentation, however, offers no explanation as to how the inconsistencies identified during the applicant's visa interviews led to a finding that she was engaged in alien

smuggling and the record does not otherwise support this conclusion. A third consular memorandum, dated June 10, 2005, indicates that the discrepancies in the applicant's testimony at her interviews led to a finding that the applicant was inadmissible under section 212(a)(6)(C) of the Act. It does not indicate that a consular officer determined that the applicant was inadmissible under section 212(a)(6)(E) of the Act. As the record offers no meaningful documentation of the actions or the reasoning supporting a finding of inadmissibility based on alien smuggling, the AAO does not find the applicant to be inadmissible under section 212(a)(6)(E) of the Act and withdraws the officer-in-charge's finding in this regard.

The record does, however, demonstrate that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) for having attempted to procure admission to the United States through fraud or willful misrepresentation.

On October 28, 1999, the applicant was interviewed by a consular officer at the U.S. embassy in Accra regarding her application for a U.S. nonimmigrant visa. The nonimmigrant visa application filed by the applicant indicates that she testified that she was married to [REDACTED] and had two children. However, on September 26, 2000, when the applicant's spouse, [REDACTED], filed the first of two Form I-129Fs, Petition for Alien Fiancé(e), on her behalf, he indicated that she had not been previously married. At a May 17, 2001 consular interview, the applicant stated that she had never been married and had one child who was the biological son of [REDACTED]. *Consular Memo*, dated January 22, 2002. In response to U.S. embassy queries concerning these apparent inconsistencies, the applicant stated that she had never filed the 1999 visa application, that she was not the subject of the submitted photograph and that the signature on the 1999 application was not hers. *Id.*

On July 16, 2002, [REDACTED] married the applicant in Ghana and filed the Form I-130, Petition for Alien Relative, and a second Form I-129F on her behalf. Both petitions were approved by Citizenship and Immigration Services (CIS). However, in light of the information provided by the applicant at her 1999 interview, the second Form I-129F petition filed by [REDACTED] was revoked by the Director, National Benefits Center, based on Mr. [REDACTED]'s failure to establish a bona fide marital relationship with the applicant. *Notice of Intent to Revoke*, dated September 30, 2002 and *Notice of New Decision*, dated October 25, 2004. A Form I-130 remains approved.

On appeal, counsel submits a June 1, 2005 affidavit sworn by the applicant in which she states that, prior to her marriage to [REDACTED], she was approached by a man who informed her that he could obtain a U.S. visa for her. She states that she gave this individual her passport, signed documents she did not read and paid him a fee for his services. Subsequently, she contends, she informed this individual that she did not wish to proceed with the visa process and that he then returned her passport and the fee. The applicant further contends that she first learned of the 1999 nonimmigrant visa application filed in her name at the time of her May 17, 2001 visa interview. She asserts that it was the individual to whom she gave her passport who was scheduled for the October 28, 1999 and that she was not present. The record also provides a sworn statement from the applicant's mother, dated October 10, 2003, who states that the applicant was a spinster prior to marrying [REDACTED].

Despite the applicant's claims to the contrary, the AAO finds the record to establish that it was the applicant who was interviewed at the U.S. embassy on October 28, 1999. Embassy records indicate that a consular officer conducted an interview with the applicant on October 28, 1999. *Consular Memo*, dated January 22, 2002. Moreover, the record contains a copy of the applicant's nonimmigrant visa application, to which the applicant's

photograph is affixed and which bears her signature. Accordingly, the record demonstrates that, in 1999, the applicant testified to a U.S. consular official in Accra that she was married to an individual named [REDACTED] that theirs was a customary marriage under the laws of Ghana and that they had two children.

In seeking admission to the United States, the applicant has claimed to be married to both [REDACTED] and [REDACTED], and has submitted no documentation that would reconcile these inconsistent claims, i.e., evidence of her divorce from [REDACTED]. Accordingly, the AAO finds that the applicant either misrepresented her marital state at the time of her 1999 interview in order to obtain a U.S. nonimmigrant visa or has done so to benefit from the Form I-130 filed on her behalf by [REDACTED]. Whichever is the case, the record establishes that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for having sought to procure a visa by fraud or willful misrepresentation.

As previously noted, section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. In the present case, the only qualifying relative is [REDACTED] the applicant's spouse. Hardship the alien herself may experience or that would be felt by other family members as a result of separation is not considered in section 212(i) waiver proceedings, except as it would affect [REDACTED]. 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 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 age of the qualifying relative may be an additional relevant factor. *See Matter of Pilch*, 21 I&N 627, 630 (BIA 1996). 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).

The AAO notes that extreme hardship to [REDACTED] must be established in the event that he resides in Ghana or in the event that he remains in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO now turns to a consideration of the relevant factors in this case.

The record includes the following evidence to establish the applicant's claim that [REDACTED] would suffer extreme hardship if she were found inadmissible to the United States: counsel's brief, dated January 20, 2006; a sworn statement from [REDACTED] dated December 30, 2004; a letter from [REDACTED]'s physician, dated November 24, 2004; and a letter from [REDACTED]'s supervisor, dated January 12, 2006.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to her spouse in the event that he relocates to Ghana. In his brief, counsel asserts that [REDACTED] would suffer emotionally and financially as a result of relocating to Ghana. [REDACTED] counsel states, has not lived in Ghana for more than ten years and has no professional affiliations in Ghana. Were [REDACTED] to relocate to Ghana, counsel contends that he would have no avenues for employment and the ten years he has invested in the 7-Eleven corporation would have been wasted. According to counsel, relocation to Ghana would have a devastating financial impact on [REDACTED]'s family.

Counsel also asserts that [REDACTED] has suffered from physical difficulties and depression since 1999 and that a move to Ghana would likely result in a dramatic deterioration of his physical and emotional condition. He describes [REDACTED] as taking a variety of medications and undergoing frequent medical evaluations to diagnose and relieve his symptoms, which include chest pain, increased fatigue, depression and dizziness. Counsel questions [REDACTED]'s ability to obtain suitable medical care in Ghana as a result of the absence or poor quality of medical facilities. He predicts that, in Ghana, [REDACTED] would suffer from a worsened state of depression caused by his health difficulties, the loss of his career and livelihood in the United States and the loss of educational opportunities for his son.

An affidavit sworn by [REDACTED] on December 30, 2004 states that he has been suffering from depression since the applicant's and his son's visas were denied.¹ He indicates that he has considered moving back to Ghana several times to live with the applicant and his son but knows that he has a greater ability to provide for them financially by working in the United States. If he returns to Ghana, [REDACTED] states, he would have to give up everything he has worked for during his years in the United States. *Spouse's Affidavit*, dated December 30, 2004.

The claims made by counsel with regard to the impact that relocation to Ghana would have on [REDACTED]'s emotional and financial state are insufficient to establish extreme hardship, as they are not supported by the record. The AAO finds the record to offer no information on economic conditions in Ghana, including employment data to establish that [REDACTED] would have no avenues for employment if he returned to Ghana. There is also no proof that [REDACTED] would not have adequate medical care available to him in Ghana or that a return to Ghana would result in an increase in his depression. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA

¹ The AAO notes that, on appeal, counsel indicates that [REDACTED]'s son has joined or will join him in the United States. In his brief, counsel states that [REDACTED] and his son will have to live in Florida without the applicant should her waiver request be denied. The January 12, 2006 letter from [REDACTED]'s supervisor also states his understanding that [REDACTED]'s son has received a visa allowing him to come to the United States.

1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The AAO notes [REDACTED]'s assertion that relocating to Ghana would require him to give up everything he has accomplished in the United States and that his ability to support the applicant and his son financially would be diminished if he joined them in Ghana. Although the AAO acknowledges [REDACTED]'s financial concerns, economic detriment alone is insufficient to support a finding of extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996). The loss of current employment, the inability to maintain an existing standard of living or to pursue a chosen profession do not constitute extreme hardship. *Id.* Accordingly, the record does not demonstrate that [REDACTED] would experience extreme hardship were he to join the applicant in Ghana.

The second part of the analysis requires the applicant to establish extreme hardship in the event that Mr. [REDACTED] remains in the United States. On appeal, counsel contends that if the Form I-601 is not approved that [REDACTED] and his son would have to live in Florida without the applicant and that [REDACTED] suffers from depression as a result of being separated from the applicant. *Counsel's Brief*, dated January 20, 2006. In support of his claims relating to [REDACTED]'s health, counsel submits a letter from [REDACTED] physician, [REDACTED].

[REDACTED] states that he has had [REDACTED] as a patient since 1999 and that he has seen him frequently since October 2003. In March 2003, [REDACTED] states, [REDACTED] complained of chest pains that were found to be muscle spasms and in October 2003 returned to the medical center because he was experiencing fatigue and was not sleeping well. [REDACTED] indicates that he subsequently learned that [REDACTED]'s family was in Ghana and that his separation from them had made his patient feel more depressed. [REDACTED]'s September 2004 reevaluation of [REDACTED] in relation to his fatigue found him to have increased levels of irritability and constant anger, as well as mood swings with decreased energy and increased depression as a result of concentrating on his family's situation. [REDACTED] states that he prescribed medication to combat Mr. [REDACTED]'s fatigue and assist him in sleeping. [REDACTED] concludes that [REDACTED] has been suffering from bouts of depression for the past two years and that his depression stems from his separation from his family and the long working hours necessary to support himself and his family in Africa. [REDACTED] finds that it would benefit [REDACTED] greatly to have his family in the United States. *Letter from [REDACTED] Northwest Family Medical Center*, dated November 24, 2004.

[REDACTED]'s 7-Eleven field manager, [REDACTED] reports that [REDACTED] has been employed by 7-Eleven as a store manager for six years. He reports that, over the years, he has observed [REDACTED] sadness over the separation from his wife and son. *Memorandum from [REDACTED]* dated January 12, 2006.

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.

Although the AAO finds the record to establish that [REDACTED] has been depressed and fatigued as a result of being separated from the applicant, it does not demonstrate that the emotional hardship he has suffered as a result of the applicant's inadmissibility is greater than that normally experienced by spouses separated as a result of removal. [REDACTED] does not indicate that the emotional impact of [REDACTED]'s separation has prevented him from meeting his responsibilities or has otherwise impaired his ability to perform his daily activities. He further indicates that the medication he has prescribed for [REDACTED] has helped with Mr. [REDACTED]'s fatigue and sleeping problems. The AAO notes that the record does not provide an evaluation of [REDACTED]'s mental/emotional state prepared by a licensed mental health professional identifying the nature or extent of [REDACTED]'s current depression or his mental health prognosis.

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's waiver application were to be denied. Rather, the record demonstrates that [REDACTED] would experience the distress and difficulties routinely created by the removal of a spouse 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 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. Accordingly, the record contains insufficient evidence to establish that [REDACTED]'s continued separation from the applicant would result in extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by a denial of the applicant's waiver application. 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. Accordingly, the appeal will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.

ORDER: The appeal is dismissed.