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FILE: [REDACTED] Office: ACCRA, GHANA Date: JUN 02 2008

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the 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 Officer-in-Charge, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ghana 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 an immigration benefit by fraud or willful misrepresentation of a material fact. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative. 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 husband.

The officer-in-charge concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of Officer-in-Charge* dated March 3, 2005.

On appeal, counsel asserts that Citizenship and Immigration Services (“CIS”) abused its discretion by failing to give sufficient weight to the hardship that would result from family separation. Specifically, counsel states that the continued separation of the applicant from her husband is causing him mental anguish and is “tantamount to very cruel and unusual punishment.” Counsel further states that they should not be deprived of their right to reside together and build a family because of one “indiscretion” and states that the applicant has not committed a crime anywhere in the world.

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.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [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(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship.

These factors included 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.

U.S. court decisions have additionally 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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. 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.

In the present case, the record reflects that the applicant is a thirty-nine year-old native and citizen of Ghana who is married to a thirty-three year-old native and citizen of the United States. The applicant was the beneficiary of a fiancé(e) visa petition filed on her behalf by her husband before their marriage. The applicant's fiancé(e) visa was denied and she later applied for a visitor visa and failed to disclose the previous fiancé(e) visa application. As a result of her failure to disclose this material fact, the applicant was found to be inadmissible when she later applied for an immigrant visa as the beneficiary of a Petition for Alien Relative (I-130) filed by her spouse. The applicant then filed for a waiver of grounds of inadmissibility. In support of the waiver application, the applicant's husband stated that denial of the waiver would result in family separation and would cause him financial difficulties because he would be unable to provide for the applicant's basic needs and financial assistance on a regular basis. *See Decision of the Officer-in-Charge* dated March 3, 2005.

Counsel asserts that the applicant's husband would suffer extreme hardship if the applicant is denied admission to the United States because he has the right to choose a spouse and reside together with her and raise a family. *See Brief in Support of Appeal*. Counsel further states that the continued separation of the applicant from her husband is causing emotional hardship and mental anguish that amounts to cruel and unusual punishment. *See Brief in Support of Appeal*. Counsel further states that by referring to the applicant's husband as her fiancé, the officer-in-charge failed to give sufficient weight to the married union, which is a valid marriage and "not procured for immigration benefit." *See Brief in Support of Appeal*. In support of the appeal, counsel submitted photographs of the wedding ceremony of the applicant and her husband and receipts for wire transfers of money to the applicant from her husband dating from 2002 to 2004.

Although counsel asserts that the applicant's husband is suffering from mental anguish due to being separated from the applicant, there is no evidence on the record that establishes that any emotional hardship the applicant's husband is suffering is more serious than the type of hardship an individual would normally suffer

when faced with the prospect of separation from his spouse. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Although the depth of his concern over his continued separation from the applicant is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. The prospect of separation always results in considerable hardship to individuals and families. But 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, exists.

The applicant's husband claims that the effects of their continued separation on his financial situation also amount to extreme hardship because he is unable to provide the applicant with financial assistance on a regular basis. No evidence was submitted documenting the applicant's husband's income and expenses or otherwise supporting the assertion that separation from the applicant is causing financial hardship. There is no indication that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's exclusion. Having to provide financial support to the applicant while she resides in Ghana therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981), *supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The emotional and financial hardship the applicant's husband is experiencing appears to be the type of hardship that family members would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of 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.

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. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.