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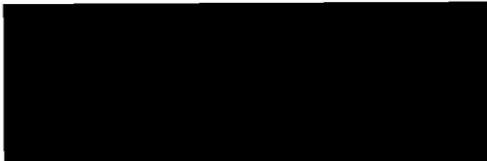
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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FILE:



Office: CLEVELAND (COLUMBUS)

Date: JUN 10 2008

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), 8 U.S.C. section 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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Cleveland, Ohio, 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 who was found 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 having procured admission to the United States by fraud or willful misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed by his U.S. citizen spouse and 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 with his spouse and daughter.

The record reflects that the applicant presented a photo-switched Ghanaian passport in attempt to procure admission to the United States on September 16, 1995. The applicant's spouse filed the Petition for Alien Relative on the applicant's behalf on April 26, 2004, and the petition was approved on March 20, 2006. The record shows that the applicant also filed an Application to Register Permanent Resident or Adjust Status (Form I-485) on April 26, 2004. The applicant subsequently filed an Application for Waiver of Grounds of Inadmissibility (Form I-601).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated March 21, 2006.

On appeal, counsel asserts that the district director erred in denying the waiver application because the hardship is "glaringly clear." *Brief in Support of Appeal to Administrative Appeals Unit* at 3-4. Counsel asserts that the applicant's return to Ghana would deprive the applicant's spouse of his assistance in raising their child and of his significant financial contribution to the mortgage and other household expenses. *Id.* Counsel contends that the applicant's spouse would either have to work only part-time to care for her daughter (who suffers from numerous allergies), or place her daughter in daycare, and that either choice would "take a toll on the family's economic well-being." *Id.* Counsel states that given the "current educational level and experience" of the applicant and his spouse, their earning ability given the economic opportunities in Ghana would be "greatly diminished." *Id.* at 4. Counsel asserts that the district director appears only to have considered the evidence of financial and medical hardship, and to have disregarded the emotional impact of separating a young couple with a child. *Id.*

The record contains, among other documents, an affidavit from the applicant's spouse; tax, employment and other financial records; insurance documents; utility bills; bank and credit card statements; and medical records for the applicant's daughter. The entire record was considered in rendering a decision on the appeal.

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.

The record reflects that the applicant presented a photo-switched Ghanaian passport in attempt to procure admission to the United States on September 16, 1995. The applicant has not disputed on appeal that he is inadmissible under section 212(a)(6)(C) of the Act.

Section 212(i) of the Act provides that:

- (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.

A waiver of inadmissibility under section 212(a)(6)(C) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant and his child is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The only qualifying relative is the applicant's U.S. citizen spouse. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *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.

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).

U.S. courts have stated, "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); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to 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 appropriate weight in the assessment of hardship factors in the present case.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as 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, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s spouse faces extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO acknowledges that the applicant’s spouse will experience emotional and financial hardship if she chooses to remain in the United States, but the applicant has failed to demonstrate that this hardship will be **extreme**. **As noted by the district director, the applicant’s spouse is employed.** In her affidavit, the applicant’s spouse indicates that she and her daughter depend on the health insurance provided by the applicant’s employer. In the decision, the district director suggests that the hardship of losing such coverage may be ameliorated by health insurance provided by the applicant’s spouse’s employer. In his brief on appeal, counsel does not address this issue or list the potential loss of health insurance as a hardship factor. Counsel has asserted that the applicant’s spouse will have to choose between working only part-time or placing her daughter in daycare without the assistance of the applicant, but the applicant’s spouse states in her affidavit that her daughter is already in daycare and that the applicant’s assistance consists of transporting her to and from daycare. Furthermore, the applicant has failed to submit evidence showing that he will be unable to continue financial support of his spouse and daughter from Ghana, or that his daughter will be unable to obtain medical care for her food allergies there. Counsel has stated that the applicant and his spouse have “greatly diminished” earning capacity in Ghana, but has submitted no other evidence to substantiate this claim. Without documentary evidence to support a claim, counsel’s assertions 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).

The hardship described by the applicant is the common result of removal or inadmissibility. 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.

As noted above, other than the statements by counsel, the applicant has submitted no evidence showing that

his spouse would suffer extreme hardship if she relocated to Ghana. The AAO notes that the applicant's spouse would be compelled to leave her job, but the applicant has failed to submit evidence showing that his spouse would be unable to find employment in Ghana or that she would experience other hardship there.

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 his U.S. citizen spouse as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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. *See* 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.