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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
(ACC 2004 863 040 relates)

Office: ACCRA, GHANA

Date: **MAY 12 2008**

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), and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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. Wieman".

Robert P. Wieman, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting Officer-in-Charge (OIC), Accra, Ghana, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The waiver application will be denied.

The applicant, a citizen of Ghana, 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 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). The applicant was also found inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year. The applicant, therefore, also seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

The OIC concluded that the applicant had failed to establish that extreme hardship would be imposed on any qualifying relatives and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility.

On appeal, the applicant contends that his wife, a United States citizen, would suffer extreme hardship if the applicant is required to remain in Ghana. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C) of the Act states, in pertinent part, the following:

- (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 states, in pertinent part, the following:

- (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)(9)(B) of the Act provides, in pertinent part:

- (B) Aliens Unlawfully Present.-
 - (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

(v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Regarding the applicant's ground of inadmissibility under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), the OIC found that the applicant entered the United States, fraudulently, in August 1997. Specifically, the OIC stated that the applicant admitted to paying for a fraudulent passport and visa, which he used to obtain entry into the United States. He is therefore inadmissible to the United States for making a willful misrepresentation of a material fact (his identity) in order to procure entry into the United States.

Regarding the applicant's ground of inadmissibility under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), the record, as noted previously, indicates that the applicant entered the United States, fraudulently, in August 1997. He did not depart the United States until October 2005. The OIC, therefore, found the applicant inadmissible based upon the eight-year period of time he was unlawfully present in the United States. As he had resided unlawfully in the United States for more than one year and then sought admission within ten years of his last departure, the OIC correctly found the applicant inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Thus, the first issue to be addressed is whether the applicant's inadmissibility would impose extreme hardship on a qualifying family member. If extreme hardship is established, the AAO will then make an assessment as to whether it should exercise discretion.

Waivers of the bar to admission under section 212(i) of the Act resulting from a violation of section 212(a)(6)(C) of the Act, and waivers of the bar to admission section 212(a)(9)(B)(i)(II) of the Act resulting from a violation of section 212(a)(9)(B)(v) of the Act are dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. In the present case, the applicant's wife is the only qualifying relative, and any hardship to the applicant or the couple's child cannot be considered, except as it may affect 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).

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, 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 *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court of Appeals for the Ninth Circuit defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The United States Supreme Court additionally 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 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 BIA held in *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted) that:

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.

The record reflects that the applicant’s wife is a thirty-six-year-old citizen of the United States. She and the applicant have been married since July 18, 2003, and have a son, born on May 10, 2005, who is a citizen of the United States.

In her May 2, 2006 statement, the applicant’s wife states that she and the applicant were not anticipating a long-term delay; that the applicant needs to return to his family in the United States; that she and the couple’s son have struggled immensely as a result of the applicant’s absence; that immigration and household fees have caused economic hardship; that both she and the applicant were unable to work before the applicant departed the United States; and incurred a great deal of debt; that she was able to find a job, but, because they were forced to pay for immigration fees and airline tickets, she was unable to pay ongoing bills; that many of the bills she was unable to pay have been turned over to debt-collection agencies; that she has fallen behind on credit card payments; that she has been forced to move into a small, one-bedroom home; that she talks to

the applicant nearly every day (which has cost hundreds of dollars) in order to keep the lines of communication open and so that the applicant can share in their son's accomplishments; that the applicant is unable to support her and their son consistently; that she has been forced to use the government-sponsored Women-Infant-Children's (WIC) food program; that it is humiliating to use WIC; that, if the applicant were in the United States, she would not need WIC; that denial of the applicant's waiver application is punishing the American system; that she has been forced into living as a single parent; that her time together with the applicant has been lost; and that fees continue to be assessed by the government organizations that control the applicant's situation.

In his May 4, 2006 statement, the applicant states that his wife and son are experiencing financial, mental, and emotional difficulties; that the situation has been very hard on his wife; that he has been without a job and has had to borrow a great deal of money; that he has been unable to contribute to the welfare of the family; that his wife struggles to raise their son alone; and that he would like to be given a chance to take care of his family.

Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9th Cir. 1986) (holding that "lower standard of living in Mexico and the difficulties of readjustment to that culture and environment . . . simply are not sufficient."); *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating, "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances."); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

In the instant case, the applicant is required to demonstrate that his wife would face extreme hardship in the event the applicant is required to remain in Ghana, regardless of whether she joins him in Ghana or remains in Minnesota without him. In limiting the availability of the waiver to cases of "extreme hardship," Congress provided that a waiver is not available in every case where a qualifying family relationship exists.

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 wife will face extreme hardship if the applicant remains in Ghana without her. The record does not establish that she faces greater hardships than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a husband is denied entry into the United States. Although CIS is not insensitive to her situation, the financial strain she discusses in her letter is not unique to her case: economic hardship is commonly experienced in cases involving the inadmissibility of a spouse, and she fails to establish that the hardship she faces is greater than that experienced by others in her situation. The hardships she enumerates do not rise to the level of "extreme" as contemplated by statute and case law.

Nor does the record establish that the applicant's wife would face extreme hardship if she were to join the applicant in Ghana: again, the record fails to demonstrate that she would face hardship beyond that normally faced by others in her situation. Diminished standards of living, separation from family, and cultural adjustment are to be expected in such a situation. No evidence was submitted, or claims made, that she would experience financial, emotional, or medical hardship that would rise to the level of "extreme" as contemplated by statute and case law.

In nearly every qualifying relationship, there is a deep level of affection and a certain amount of emotional, social, and economic interdependence. While the prospect of separation 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 INA § 212(i), be above and beyond the normal, expected hardship involved in such cases. In adjudicating this appeal, the AAO finds that the record fails to demonstrate that the applicant's wife would suffer hardship beyond that normally expected upon the inadmissibility of a spouse.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to demonstrate that his wife would suffer hardship that is unusual or beyond that normally expected upon the inadmissibility or removal of a spouse. Again, the common results of deportation or exclusion are insufficient to prove extreme hardship; the emotional hardship caused by severing family and community ties and the financial hardship that results from separation are common results of deportation and do not constitute extreme hardship. "Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v), the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. *The applicant has not sustained that burden.* Accordingly, the AAO will not disturb the OIC's denial of the waiver application.

ORDER: The appeal is dismissed. The waiver application is denied.