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

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[redacted]

FILE: [redacted] Office: CHICAGO, ILLINOIS Date: MAR 27 2007
[consolidated therein]

IN RE: [redacted]

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

ON BEHALF OF APPLICANT:

[redacted]

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Ghana who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to enter the United States by using a passport that had been reported as lost. The record indicates that the applicant's spouse is a naturalized United States citizen and she is the beneficiary of an approved Petition for Alien Fiancé(e) (Form I-129F). The applicant 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 United States citizen husband and United States citizen child.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's United States citizen spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated February 7, 2005.

On appeal, the applicant, through counsel, asserts Citizenship and Immigration Services (CIS) abused its discretion, by failing "to render a decision within a reasonable time after filing" the waiver application. *Form I-290B*, filed March 7, 2005.

The record includes, but is not limited to, counsel's brief, an affidavit from the applicant's husband, and numerous medical reports and documents on the applicant's husband. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

> (i) In general.-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).

Section 212(i) of the Act provides, in pertinent part, that:

> (i) (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 immigrant 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 AAO notes that the record contains several references to the hardship that the applicant's child would suffer if the applicant were denied admission into the United States. Section 212(i) of the Act provides that a waiver of inadmissibility under section 212(a)(6)(C)(i) of the Act, is applicable solely where the applicant establishes extreme hardship to her citizen or lawfully resident spouse or parent. Congress specifically does not mention extreme hardship to a United States citizen or lawful permanent resident child. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's child will not be considered, except as it may cause hardship to the applicant's spouse.

In the present application, the record indicates that on February 16, 1995, the applicant attempted to enter the United States at Boston, Massachusetts, by using a stolen passport under the name of "[redacted]." The applicant was then removed to Ghana. On February 1, 1996, the applicant filed a Form I-129F, which was approved on February 12, 1996. On November 13, 1996, the applicant entered the United States on a K-1 fiancé visa. On February 7, 1997, the applicant married [redacted] a naturalized United States citizen, in Chicago, Illinois. On February 14, 1997, the applicant's husband filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On December 5, 2003, the applicant filed a Form I-601. On January 2, 2004, the Form I-485 was denied; however, on or about May 21, 2004, the Form I-485 was reopened. On February 7, 2005, the District Director denied applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to her United States citizen spouse.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of section 212(a)(6)(C)(i) of the Act. A waiver under section 212(i) 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. Hardship the alien herself experiences upon removal is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse. 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, 565-66 (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 to a qualifying relative. The factors include 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.

Counsel asserts that the applicant's husband would face extreme hardship if he relocated to Ghana in order to remain with the applicant. The applicant's husband states that if their daughter were forced to go to Ghana, "she would not have the same educational opportunities as in" the United States. *Affidavit by* [redacted] dated December 4, 2003. The AAO notes that as a United States citizen, the applicant's daughter could return to the United States at any time to attend school. The applicant's husband claims that his "daughter has an irregular heartbeat...[t]his condition must be monitored, but she would not have this medical care if she had

to live in Ghana." *Id.* The AAO notes that the applicant failed to provide any evidence of her daughter's health condition. Counsel states "[d]ue to over one year delay in the decision and due to the health problems involved, the applicant should have been given an opportunity to update the health condition of her husband and child." *Brief in Support of Appeal*, filed April 6, 2005. However, counsel and the applicant still failed to provide the AAO with updated medical reports on the health conditions of the applicant's husband and daughter. The applicant's husband states he cannot live in Ghana because he "had prostate cancer," which "must be checked regularly." *Affidavit by* [redacted], *supra*. The applicant's husband claims "medical care in Ghana is inadequate;" however, he failed to provide any documentation that he could not be treated for his medical conditions in Ghana. *Id.* The record contains no current evaluation by his physician of his condition, prognosis, or need for treatment. The applicant's husband states that he is a partner in a business that he started in 1992 and if he returns to Ghana, he "would lose everything [he] put into the business...[and he] would be unable to find employment in Ghana." *Id.* No explanation was provided as to why he would be unable to find employment in Ghana or why he could not maintain his interest in his company from overseas. Additionally, the applicant's husband states his daughter "would have trouble adapting to the local language and accent." *Id.* The AAO finds the applicant failed to establish that her husband and daughter would suffer extreme hardship if they accompanied the applicant to Ghana. The applicant's husband states he has "no support system" in the United States, but he failed to demonstrate whether or not he has any family ties in Ghana. The applicant's husband is a native of Ghana and presumably speaks the language, and there is no evidence that the applicant's daughter, who is nine years old, could not adjust to the culture of Ghana.

In addition, counsel does not establish extreme hardship to the applicant's spouse if he remains in the United States, maintaining his employment, access to adequate medical health care, and education for his daughter. The AAO notes that no documentation was submitted to establish that the applicant's husband will experience a major financial hardship as a result of the separation from the applicant. The applicant's husband claims that if the applicant were removed to Ghana, he "would be unable to care for [his] daughter properly...[he] could not handle taking her to and from school, monitoring her studies, and advising her in any female problems." *Id.* The AAO notes that the applicant's husband has an adult son, who lives in the same apartment building, and could presumably help with taking care of his younger half-sister. As a United States citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Further, beyond generalized assertions regarding country conditions in Ghana, the record fails to demonstrate that the applicant will be unable to contribute to her family's financial wellbeing from a location outside of the United States. The AAO notes that the applicant worked as a marketing manager/sales person in Ghana. Moreover, the United States Supreme Court has held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *INS v. Jong Ha Wang,* 450 U.S. 139 (1981).

Although the AAO is not insensitive to the applicant's situation, the emotional hardship of separation is a common result of separation and does not rise to the level of "extreme" as contemplated by statute and case law. 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 AAO recognizes that the applicant's husband will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

United States 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 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. In *Hassan, supra,* the Ninth Circuit Court of Appeals 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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. 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)(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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.