U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H2

DEC 09 2009

FILE: [redacted] Office: PHILADELPHIA, PA Date:

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Philadelphia, Pennsylvania 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 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 having procured admission into the United States by fraud or willful misrepresentation. The applicant is married to a United States citizen and 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 his spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director,* dated April 27, 2006.

On appeal, counsel for the applicant contends that United States Citizenship and Immigration Services (USCIS) ignored evidence in the record, including statements and medical records, which demonstrate that the applicant has established extreme hardship to his qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B, Notice of Appeal or Motion.*

In support of the waiver, the record includes, but is not limited to, a statement from the applicant; a statement from the applicant's spouse; medical records for the applicant's spouse; employment letters for the applicant; earnings statements for the applicant; a tax statement and tax return for the applicant's spouse; a bank statement; utility bills; a rent receipt; and an apartment lease. The entire record was reviewed and considered in rendering this decision.

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.

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.

The record reflects that on May 20, 2005, during his adjustment of status interview, the applicant admitted that when he applied for his nonimmigrant visa at the U.S. consulate in Ghana, he stated he was married when he was not because he believed he would not have been granted the visa had he told the truth. *Sworn Statement*, dated May 20, 2005; *Form I-485, Application to Register Permanent Resident or Adjust Status*. Based on this misrepresentation, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act. The applicant does not contest this finding.

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) 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. The plain language of the statute indicates that hardship that the applicant would experience if the applicant's waiver request is denied is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only relevant hardship in the present case is the hardship suffered by the applicant's spouse if the applicant is removed. If 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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.

The AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Ghana or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse relocates to Ghana, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse was born in the United States. *Birth Certificate.* Her parents were born in and reside in the United States. *Form G-325A, Biographic Information, for the applicant's spouse*. The record does not address how the applicant's spouse would be affected if she resides to Ghana. The record fails to indicate whether the applicant's spouse has familial and cultural ties in Ghana. The record does not address employment opportunities for the applicant's spouse in Ghana, nor does the record document, through published country conditions reports, the economic situation in Ghana and the cost of living. While the record documents a history of medical conditions for the applicant's spouse that include untreated breast cancer, foot pain, ankle surgery, asthma, epilepsy, a urinary tract infection, and abdominal pain (*see medical records*), the record does not address whether she would be able to receive adequate care in Ghana. The record does not

include documentary evidence, such as media reports or country conditions reports, regarding the availability and adequacy of health care in Ghana. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Ghana.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the applicant's spouse was born in the United States. *Birth Certificate*. Her parents were born in and reside in the United States. *Form G-325A, Biographic Information, for the applicant's spouse*. The applicant's spouse has a history of medical conditions that include untreated breast cancer, foot pain, ankle surgery, asthma, epilepsy, a urinary tract infection, and abdominal pain. *Medical records*. The applicant's spouse notes that the applicant has assisted her in caring for her medical needs. *Statement from the applicant's spouse*, dated August 18, 2005. The record, however, does not demonstrate that the applicant's spouse requires care that she would be unable to provide for herself in the applicant's absence. The AAO also notes that the applicant's spouse's physicians consider her to be employable and have found her previously fractured ankle to be totally healed. *Medical records*. The applicant's spouse states that she has suffered from drug addiction in the past and the applicant has been very supportive in helping her to attend Narcotics Anonymous and Alcoholics Anonymous meetings and maintain her sobriety. *Statement from the applicant's spouse*, dated August 18, 2005. She further states that she takes medication in the forms of Haldol and Prozac for her psychological issues. *Id.* While the AAO acknowledges these assertions, it notes that the record does not include documentation regarding the applicant's spouse's past substance abuse or her attendance at recovery meetings, nor does the record include documentation from a licensed healthcare professional that establishes the psychological conditions referenced by the applicant's spouse or the medications she has been prescribed. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The record includes a rent receipt, an apartment lease, and utility bills showing various expenses for the applicant's spouse. *Rent receipt; apartment lease; and utility bills*. While the AAO acknowledges these documented expenses, it notes that there is nothing in the record to demonstrate that the applicant would be unable to obtain employment and contribute to his spouse's financial well-being from a place other than the United States.

The AAO acknowledges the difficulties faced by the applicant's spouse. However, 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. Separation from a loved one is a normal result of the removal process.

The AAO recognizes that the applicant's spouse will endure hardship as a result of her separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

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(a)(6)(C) 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.