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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: BALTIMORE Date: MAR 06 2009

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 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).

Michael Grissom

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland. 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 of Ghana, the wife of a U.S. citizen, the mother of U.S. citizen children, and the beneficiary of an approved Form I-130 petition filed by her husband. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i). The applicant seeks a waiver of inadmissibility in order to remain in the United States with her husband and children.

The district director found that the applicant had failed to establish extreme hardship to her U.S. citizen spouse and denied the application. On appeal counsel contended that the evidence submitted was sufficient to show extreme hardship. Counsel also provided additional evidence.

Section 212(a)(6)(C)(i) of the Act provides:

> 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.

On her Form I-485, Application to Adjust Status, the applicant stated, at Item 10, Part 3, that she had never, by fraud or willful misrepresentation of a material fact, sought to procure a visa, or entry into the United States, or any other immigration benefit.

The record contains a printout of criminal incidents obtained from the FBI's Criminal Justice Information System, commonly called a "rap sheet." The printout was obtained by matching the applicant's fingerprints with fingerprints of those arrested or detained for criminal acts. That printout indicates that the applicant was arrested or detained, on April 4, 2001, in Newark, New Jersey, under the name [redacted] for attempting to enter the United States in violation of U.S. immigration laws. The applicant was refused admission to the United States pursuant to the Visa Waiver Passport Program.

The information obtained through the fingerprint search was included in the decision denying the waiver application. In an undated, sworn affidavit submitted on appeal, the applicant stated that, sometime prior to April 28, 2002, she attempted to enter the United States pursuant to the Visa Waiver Pilot Program using documents issued to a [redacted] She states that she was permitted to withdraw her application for entry and return to Britain.

Not only does the applicant not contest that she attempted to enter the United States illegally, she has admitted to that attempted illegal entry. The AAO finds that the applicant's sworn admission, coupled with the information from the criminal record printout, is sufficient to demonstrate that she is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. Further, the applicant's misrepresentation on the I-485, that she had never by fraud or willful misrepresentation of a material fact, sought to procure a visa, or entry into the United States, or any other immigration benefit, was

in itself a misrepresentation of a material fact and also renders her inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The balance of this decision will pertain to whether waiver of the applicant's inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(i)(1) provides, in pertinent part:

> The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

A waiver of inadmissibility under section 212(i) 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 or her children is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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 nonexclusive list of 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 has held:

> 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).

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 her November 3, 2006 statement the applicant asserted that her removal would devastate her entire family, especially her children. She stated that her home country of Ghana is very poor, that separation from her family would have an "untold and enormous effect on [her] health, and that her husband would be obliged to raise their children by himself, which would greatly affect every aspect of his life.

The applicant did not specify how the poverty in Ghana would adversely affect her spouse. The applicant did not explain how going to Ghana would adversely affect her health, and did not explain how that would occasion hardship to her husband. The applicant did not indicate how, if she remains in the United States, her husband's obligation to raise alone the children born of his marriage to the applicant would constitute extreme hardship. The applicant did not provide any reason why her husband could not accompany her to Ghana. The record contains no other evidence pertinent to the hardship that the applicant's removal from the United States would occasion to her U.S. citizen spouse.

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 refused admission. Rather, the record suggests that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

The record suggests that the applicant has very loving and devoted family members who are extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation 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 made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *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); *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). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See* INS v. Jong Ha Wang, *450 U.S. 139 (1981)* (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits 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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.