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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CHICAGO, IL Date: NOV 0 4 2009

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, Chicago, Illinois, 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 pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission to the United States by fraud or willful misrepresentation. The applicant's spouse is a U.S. citizen and her mother is a lawful permanent resident, and she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, at 4, undated.

On appeal, counsel asserts that the district director committed various factual errors in reaching his decision, improperly narrowed the definition of extreme hardship, failed to consider the hardship factors in the aggregate and did not adequately consider evidence of hardship.[1] *Form I-290B Supplement*, received March 21, 2005.

The record includes, but is not limited to, counsel's brief, medical records for the applicant's spouse and mother, the applicant's spouse's statement, the applicant's spouse's son's statement, the applicant's mother's statement, letters of support for the applicant and country conditions information on Ghana. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant presented her sister's passport in order to procure admission to the United States in October 1989. The AAO finds the applicant inadmissible under section 212(a)(6)(C)(i) of the Act for her misrepresentation.

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

[1] The AAO notes the clerical errors in the district director's decision, including his reference to an April 15, 1997 filing date for the Form I-601 when it was the applicant's first Form I-130 that was filed on that date. These errors do not, however, appear to have affected the district director's reasoning in reaching his decision.

> 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(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this matter, the applicant's spouse. Hardship to the applicant or the three U.S. citizen children claimed by the applicant is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship affects the qualifying relative. 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 (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. These factors included the presence of 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to a qualifying relative must be established whether the qualifying relative resides in Ghana or in the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that the qualifying relative resides in Ghana. The applicant's spouse states that it will be very difficult for him to leave his family especially with his health, people in Africa are dying due to lack of supplies and medicines, he will not be able to survive in Ghana due to the lack of jobs, an average worker in Ghana makes $20 a month, he has read about the poor economy and access to health care, he is a glucose six phosphate dehydrogenase patient, his disease causes anemia upon exposure to certain drugs, he has been advised not to travel to Ghana due to his disease, and he wants to avoid getting sick and being exposed to the poor conditions and an environment with malaria-causing mosquitoes. *Applicant's Spouse's Statement on Appeal*, undated. The record reflects that the applicant's spouse is on numerous medications related to angina, cholesterol, diabetes, rhinitis, high blood pressure, and allergies. *Pharmaceutical Records*, dated April 19, 2005. The record does not, however, include documentary evidence of the specific conditions with which the applicant's spouse has been diagnosed, the severity of his medical problems, how they affect his ability to function on a daily basis or that he has been advised against travel to Ghana due to his

health. The AAO notes the 2006 article on health conditions in Ghana submitted by the applicant, which reports that of the 12 million outpatient cases in Ghana, 5 million are malaria cases. *Accra Daily Mail*, dated May 15, 2006. It does not, however, find this information to establish that the applicant's spouse would contract malaria if he relocated to Ghana. The record also fails to provide documentary evidence that the applicant or her spouse would be unable to obtain suitable employment in Ghana. Going on record without supporting documentation will not meet the applicant's burden of proof in 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 applicant's spouse's oldest son states that the applicant's spouse has eight children and thirteen grandchildren, he spends endless time with his grandchildren, he and the applicant organize the annual family reunion, and their move to Africa will be devastating to the family. *Applicant's Spouse's Oldest Son's Statement*, undated. The record does not address hardship to the applicant's mother if she were to relocate to Ghana.

The AAO finds that the record does not include sufficient evidence of emotional, financial, medical or other hardships that, in the aggregate, establish that a qualifying relative would experience extreme hardship upon relocating to Ghana.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. Counsel states that the applicant's spouse would become the primary caregiver for their two children. *Brief in Support of Appeal*, at 4. The applicant's spouse states that the applicant is the apple of his eye, he used to be a heavy drinker, his drinking has been reduced since meeting the applicant, he is now a social drinker, he has high blood pressure and the applicant reminds him to take his medication, he has been diagnosed with diabetes and takes metformin twice a day, the applicant helps him check his blood sugar and helps prevent him from going into a hypoglycemic reaction, the applicant knows the signs and symptoms of sugar levels and prevents him from going into a diabetic coma and being hospitalized, he will be handicapped without the applicant's assistance in managing the bills and providing for the family, their children love the applicant and the family will be greatly hurt emotionally. *Applicant's Spouse's Statement*. The applicant's spouse further asserts that he is emotionally attached to the applicant and to her son from a previous relationship. *Applicant's Spouse's First Statement*, dated June 26, 2002. He states that it would be traumatic for him to be separated from his stepson and that, with the exception of a sister, the applicant and her son are his only real family in Chicago. *Id.* The applicant's spouse's oldest son states that the applicant's spouse has changed since the applicant came into his life, he is now more organized and responsible, he spends more time with his grandchildren and eats more home-cooked food, and he has stopped drinking and is a born again Christian. *Applicant's Spouse's Oldest Son's Statement*, undated.

The AAO notes that there is no documentary evidence that establishes that the applicant and her spouse have two children for which the applicant's spouse would have to care in her absence. The only birth certificate in the record is for the applicant's spouse's stepson. Further, the record does not contain documentary evidence that establishes the role that the applicant plays in her spouse's care or that he would be unable to maintain his life without her. The AAO notes that the statement

from the applicant's spouse's son appears to contradict his father's claim that his only relative in Chicago other than the applicant and his stepson is his sister. The applicant's spouse's son indicates that he and his children live near the applicant's spouse and that the applicant's spouse spends a great deal of time with his grandchildren.

Counsel states that the applicant's mother needs the applicant's assistance, the applicant is a nurse and is able to look after her mother's health. *Brief in Support of Appeal*, at 4. The applicant's mother states that she had surgery in 2002 to correct a severe arthritic herniated disc; the applicant takes her to therapy and doctor's appointments; she depends on a cane and the applicant takes her for walks; the applicant is a nurse and played a major role before and after her surgery; the applicant supports her by paying her rent, light bill and medical bills; the applicant stops by daily to check on her, makes sure she has enough food to eat and her medication is up to date; and the applicant cooks for her and cleans her apartment. *Applicant's Mother's Statement*, dated June 25, 2002. The record does not include documentary evidence that establishes the financial status of the applicant's mother or that the applicant provides her with financial assistance. The AAO notes the 2002 medical evidence relating to the applicant's mother. However, no evidence was submitted on appeal to establish that the applicant's mother continues to require the applicant's assistance.

The record does not include sufficient evidence of emotional, financial, medical or any other hardships that, in the aggregate, establish that a qualifying relative would experience extreme hardship upon remaining in the United States.

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.

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)(9)(B) 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.