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U.S. Department of Homeland Security
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]

SEP 21 2009

FILE: [redacted] Office: CLEVELAND (COLUMBUS, OHIO) Date:

IN RE: Applicant: [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).

Michael Grissom

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Cleveland, Ohio, and 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 the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresenting a material fact in order to obtain an F-1 student visa. The record indicates that the applicant is married to a United States citizen and he is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 his United States citizen wife.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated April 17, 2007.

On appeal, the applicant, through counsel, asserts that "[t]he Service erred in denying the I-601 waiver." *Form I-290B*, filed May 16, 2007.

The record includes, but is not limited to, counsel's appeal brief, an affidavit from the applicant's wife, and letters from the applicant and his brother. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) 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 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 [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 [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...

In the present application, the record reflects that the applicant entered the United States on September 3, 2003, on an F-1 student visa to attend Saint Martin's College in Washington. However, the applicant failed to attend Saint Martin's College, and instead resided in Maryland. On December 21, 2006, the applicant's United States citizen wife filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On March 13, 2007, the applicant's Form I-130 was approved. On April 10, 2007, the applicant filed a Form I-601. On April 17, 2007, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative.

In a letter dated April 6, 2007, the applicant claims that he did not willfully misrepresent his intentions to attend Saint Martin's College; rather, he claims that because he entered the United States eight days after school started, he was not admitted into school. The AAO notes that even if the applicant was too late to attend Saint Martin's College that semester, he did not attempt to attend Saint Martin's College at a later date. Additionally, the applicant states that the international student coordinator at Saint Martin's College recommended that he return to Ghana; however, the applicant stayed in the United States even though his authorization to remain in the United States was only to attend Saint Martin's College, which he did not do. The AAO finds that the applicant willfully misrepresented a material fact when applying for an F-1 student visa to attend Saint Martin's College, as established by the applicant entering the United States eight days after school started and by never actually making travel arrangements to Washington to attend school there.

The AAO notes that when a misrepresentation is committed it must be material. A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964); *Matter of S- and B-C-*, 9 I&N Dec. 436 (BIA 1950; AG 1961). According to the Department of State's Foreign Affairs Manual and the Board of Immigration Appeals (Board), a misrepresentation is material if either: (1) The alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry that is relevant to the alien's eligibility and that might well have resulted in a proper determination that he be excluded. *9 FAM 40.63 N61*; *see also Matter of S- and B-C-, supra.* Determining an alien's intent at the time he or she applies for a nonimmigrant visa is a difficult task, as clear evidence of this intent often only emerges after the alien is admitted to the United States. In this case, the circumstantial evidence of the applicant's immigrant intent during the period after his visa was issued and after he was admitted to the United States, coupled with his failure to explain why he never sought to attend school after he was allegedly informed that he could not enroll in September 2003, is sufficient to demonstrate that the applicant did not intend to attend school in the United States when he applied for an F-1 visa and was admitted to the United States. His failure to reveal his intent to remain in the United States permanently and not to attend school in nonimmigrant status during his student visa interview or at the time of admission is a material misrepresentation rendering him inadmissible to the United States under section 212(a)(6)(C)(i) of the Act. Additionally, the AAO notes that counsel does not dispute that the applicant misrepresented himself in order to gain entry into the United States; therefore, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C) of the Act.

The applicant is seeking a section 212(i) waiver of the bar to admission resulting from a violation of sections 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 himself 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 (Board) 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 claims that if the applicant's wife joins the applicant in Ghana, she will suffer extreme hardship. Counsel states all of the applicant's wife's family resides in Ohio, and if she "accompan[ies] [the applicant] to Ghana, her ability to see her extended family will be irreparably harmed." *Appeal Brief,* page 1, filed May 16, 2007. Counsel states that the applicant's wife has no family in Ghana, and if she joined the applicant in Ghana, her standard of living would decrease. The AAO notes that the applicant's wife may experience some hardship in relocating to Ghana, a country in which she has no previous ties; however, it has not been established that there are no employment options for her in Ghana or that she has no transferable skills that would aid her in obtaining a job in Ghana. Additionally, the AAO notes that counsel states the applicant's wife will join the applicant in Ghana because "she does not want to be separated from her husband and [d]ivorce is not an option." *Id.* at 2. Counsel states the applicant's wife is currently enrolled in college in Ohio. The AAO notes that it has not been established that the applicant's wife cannot continue her education in Ghana. Counsel claims that the applicant's wife cares for her disabled mother. *See id.* at 2. The AAO notes that other than counsel's statement and the applicant's wife's affidavit, there was no medical documentation submitted establishing that the applicant's mother is disabled, what her medical issues are, any prognosis or what assistance is needed and/or given by the applicant's wife. The applicant's wife states that if she joins the applicant in Ghana, she worries about the psychological hardship it would cause her mother. The AAO notes that the applicant's mother-in-law is not a qualifying relative for a waiver under section 212(i) of the Act. The AAO finds that the applicant failed to establish that his wife would suffer extreme hardship if she joins the applicant in Ghana.

In addition, counsel does not establish extreme hardship to the applicant's wife if she remains in the United States, in close proximity to her family and continuing her education. The AAO notes that as a United States citizen, the applicant's wife is not required to reside outside of the United States as a result

of denial of the applicant's waiver request. In the applicant's wife's affidavit, she states that the applicant is "very supportive in every aspect of [her] life." The AAO notes that beyond generalized assertions regarding country conditions in Ghana, the record fails to demonstrate that the applicant will be unable to contribute to his wife's financial wellbeing from a location outside of the United States. 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).

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 Board 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 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)(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.