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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: BALTIMORE, MD Date: JAN 11 2011

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Shumway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, 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 in 1995. The applicant is married to a U.S. citizen and has three U.S. citizen children. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

In a decision dated July 25, 2008, the district director found that the applicant failed to demonstrate that his qualifying relative would suffer extreme hardship as a result of his inadmissibility to the United States. The application was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B) dated August 21, 2008, counsel states that the district director failed to properly consider the facts in the applicant's case; he did not consider hardship to the six children the applicant supports when hardship to them is directly related to the hardship that would be suffered by the applicant's spouse; and he misrepresented the law in stating that the hardship must be exceptional.

The record indicates that in 1995 the applicant used his Ghanaian passport and his brother's Canadian permanent resident card to enter the United States.

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, in pertinent part:

> (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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or

lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang,* 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez,* the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors

considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the

United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The record of hardship includes: affidavits from the applicant, his spouse, and his daughter; a letter from a social worker and other medical documentation concerning the applicant's son's disability; a letter from the Injured Worker's Insurance Fund and other medical documentation concerning the applicant; a report on broken homes; and country condition reports for Ghana.

In an affidavit dated June 1, 2006, the applicant states that he and his spouse have six children currently living in their home, four of which are his children and two from his spouse's previous relationship. He states that although the two older children are not biologically his, he cares for and loves them as though they were his own and that the girls' biological fathers are not part of their lives. The applicant states that his children range in ages from one to fifteen and that his one son is disabled. He states that his son is receiving treatment for Attention Deficit and Hyperactivity Disorder (ADHD) with combined type and mood disorder, attends therapy two times per week, and sees his doctor once a week. The applicant states that his son's symptoms include hyperactivity, irritability, sleeplessness, fighting, and "shutting down". He also states that his son is violent with his sisters and does not pay attention in school. He states that he and his spouse made the decision to seek medical assistance because they feel their son is out of control. The applicant asserts that if he is returned to Ghana and is not able to provide his son with direction and financially stability his son may succumb to criminal behavior and have a bleak future. He states that if his son were to relocate with him to Ghana he fears he will not receive the medication and medical treatment he needs. In addition, he states that all of his children would not have the same educational opportunities in Ghana as they would in the United States.

In an affidavit dated June 1, 2006, the applicant's spouse states that the applicant provides for her and her children, that he helps her with their son, and takes her son to his doctor appointments.

In a letter dated June 1, 2006, the applicant's daughter states that the applicant provided a home for her so that she could come out of foster care and that he makes sure she is doing right.

The AAO notes that the record includes a letter from [redacted] a licensed social worker at the [redacted]. The letter dated May 30, 2006 supports the applicant's statements regarding his son's condition. The letter states that the applicant's son has been a patient at their [redacted] since April 18, 2006 and is being treated by a licensed social worker and a psychiatrist. [redacted] states that it has been recommended that the applicant's son receive individual and family therapy one time per week and medication management one time per month. [redacted] also states that the applicant's son has been prescribed Ritalin and that his father provides all the transportation to attend his appointments. The AAO also notes that other medical documentation in the record indicates that the applicant and his spouse sought help for their son as early as February 13, 2006.

Other medical documentation in the record concerns surgery that the applicant had on his right knee.

The record also includes documentation regarding country conditions in Ghana. The 2005 State Department Country Report on Human Rights Practices for Ghana states that there were numerous human rights abuses that occurred in Ghana, including abuses by police and security forces. The report also states that violence against women and child abuse remained significant problems and that people with disabilities were discriminated against. The Consular Information Sheet for Ghana, dated May 17, 2006 states that petty theft is common in Ghana and that violent crime is on the rise. The Consular Information Sheet also states that medical facilities are limited and that roads are in poor condition. The AAO also notes that the record includes a report from Probe Ministries which finds that the problems of drugs, crime, and teen pregnancy can be traced back to the problem of broken homes.

The AAO finds that the current record does not establish that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility. The AAO acknowledges that the applicant and his spouse care for six children and that one of those children has special needs which increases the burden on the family. However, the applicant's children are not qualifying relatives in this case and although hardship to them can be considered when it has been shown that hardship to them is causing hardship to the applicant's spouse, that link between the applicant's spouse and any hardship to her children has not been established in the record. In regards to separation, the record does not provide details regarding the applicant's spouse's financial and emotional life in the absence of the applicant. The record details the applicant's son's problems but does not show how these problems combined with the applicant's absence would cause the applicant's spouse hardship. In regards to relocation, the record establishes that Ghana is a developing country with economic and human rights problems, but does not detail the specific circumstances the applicant and his family, in particular the applicant's spouse, would find themselves in the event of relocation. Thus, based on the current record the AAO cannot find that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility.

The AAO notes that the record indicates that the applicant was arrested for second degree assault in Baltimore, Maryland on February 6, 1998, but this arrest did not result in a conviction and, thus, we

cannot find the applicant to be subject to section 212(a)(2)(A)(i)(I) of the Act for being convicted of a crime involving moral turpitude.

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(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.