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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

[redacted]

H5

Date: AUG 14 2012 Office: CHICAGO, IL FILE: [redacted]

IN RE: Applicant [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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.

Thank you,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted and the underlying waiver application will be granted.

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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is the daughter of a U.S. citizen and is married to a U.S. citizen, and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her mother and her husband in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. The AAO dismissed a subsequent appeal, also concluding that the applicant did not establish extreme hardship to a qualifying relative.

The applicant filed a motion to reopen and reconsider contending that the AAO failed to give proper weight to the evidence, erroneously concluded that the applicant's mother no longer required the applicant's assistance, and failed to consider the evidence in the aggregate.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, counsel has submitted a brief and additional new documentary evidence to support the applicant's waiver application. The applicant's submission meets the requirements of a motion to reopen and reconsider. Accordingly, the motion is granted.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [redacted] indicating they were married on March 19, 1997; an affidavit and a letter from [redacted] a letter from [redacted] son; an affidavit and a letter from the applicant's mother, [redacted] a letter from the Social Security Administration; a letter from [redacted] physician and copies of her medical records; letters of support, including from the applicant's church; letters from the applicant's and [redacted] employers; articles addressing country conditions in Ghana; copies of tax returns, bank statements, and other financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part:

> 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.

Section 212(i) provides, in pertinent part:

> (1) 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 . . . .

In this case, the record shows, and the applicant concedes in her sworn statement, that in October 1989, she entered the United States by using her sister's passport. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In this case, the applicant's mother, [redacted], states that she is seventy-three years old and has numerous medical problems, including severe arthritis, gout, liver/gall bladder disease, anemia, high blood pressure, high cholesterol, and spinal chord problems. She states she had spinal chord surgery in 2001 and had both knees replaced in 2008. According to [redacted] she is weak, needs regular assistance for daily living, requires the use of a cane to get around, and uses a Life Alert device. [redacted] states that her daughter helps her with household chores, cooking, cleaning, transportation, and the administration of her medications. In addition, [redacted] states that her daughter supports her financially as the only income she receives is from the Social Security Administration. According to [redacted] her daughter pays her rent and her bills, including her medical bills. She contends her daughter checks on her every day and is the only person [redacted] relies on. She states that her daughter is indispensable and that she cannot survive without her daughter. She states she cannot afford to employ anyone to help her and states that her daughter is a Licensed Practical Nurse, so is able to provide her the assistance she needs considering her medical problems. [redacted] states that she continues to be monitored by her doctors on a regular basis.

After a careful review of the entire record, the AAO finds that if Ms. Ahia remained in the United States without her daughter, she would suffer extreme hardship. The additional evidence submitted with the motion contains ample evidence addressing Ms. Ahia's numerous, serious medical problems. The record shows that [redacted] is currently seventy-six years old and a letter from her physician states that she has hypertension, hypertensive heart disease, gout, severe arthritis resulting in two total knee replacements, urinary incontinence, liver/gallbladder disease, and anemia. According to the physician, [redacted] *daughter is invaluable in helping* [redacted] *manage her* medical problems which the physician describes as chronic problems. Copies of [redacted] medical records also show that she has anxiety, has been losing weight, has hyperlipidemia, has leg pain, uses a wheelchair for long distances and a cane to get around the house, has had abnormal blood tests, and takes more than ten prescription medications daily. The record also contains a letter from the Social Security Administration stating that [redacted] receives a monthly Supplemental Security Income payment of $449, corroborating her contention regarding her limited income. The record also contains documentation that the applicant is a Licensed Practical Nurse, substantiating [redacted] contention that her daughter is uniquely qualified to assist her with her medical conditions. Considering these unique circumstances cumulatively, the AAO finds that the hardship [redacted] would experience if she remained in the United States without her daughter is extreme, going *beyond those hardships ordinarily associated with inadmissibility.*

The AAO also finds that if [redacted] returned to Ghana, where she was born, to avoid the hardship of separation, she would experience extreme hardship. As described above, the record shows that [redacted] is elderly and has numerous, chronic medical problems. She would need to readjust to a life in Ghana after having lived in the United States since at least 1998 when she became a lawful permanent resident, a difficult situation made more complicated by her age and medical problems. Moreover, the record contains articles addressing conditions in Ghana and the AAO takes administrative notice that medical facilities in Ghana are limited and that obtaining prescription medications is challenging. *U.S. Department of State, Country Specific Information, Ghana,* dated April 30, 2012. Based on these considerations, the AAO finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that the applicant's mother faces extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit, unlawful presence in the United States, and periods of unauthorized employment. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including her U.S. citizen mother, husband, and three U.S. citizen children; the hardship to the applicant's entire family if she were refused admission; the applicant's payment of taxes; letters of support describing the applicant as a compassionate, loving, and caring person who has a strong work ethic; a Certificate of Recognition naming the applicant as

the Employee of the Year for her outstanding work performance; and the applicant's lack of any arrests or criminal convictions.

The AAO finds that, although the applicant's immigration violations are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

ORDER: The motion will be granted and the underlying waiver application is approved.