U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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Washington, DC 20529-2090

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U.S. Citizenship and Immigration Services

[redacted]

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DATE: AUG 2 2 2012 Office: BALTIMORE, MD FILE: [redacted]

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:

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a 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). He is the spouse of a U.S. citizen and has four U.S. citizen children. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 30, 2010.

On appeal, counsel for the applicant states that the applicant's spouse will experience physical and financial hardship due to the applicant's inadmissibility, and that the Field Office Director failed to give proper weight to physical hardships on the applicant's spouse. *Form I-290B*, received October 29, 2010.

The record contains, but is not limited to, the following documentation: a brief from counsel; copies of tax returns and pay stubs for the applicant and his spouse; copies of birth certificates for the applicant's children; a copy of the applicant's marriage certificate; photographs of the applicant, his spouse and their family members; a copy of a neonatal discharge sheet related to the birth of the applicant's youngest child; a copy of a handwritten note from William P. Prevas, M.D., dated August 13, 2010. The entire record was reviewed and all relevant evidence considered in rendering this decision.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

> (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 chapter is inadmissible.

The record indicates that the applicant entered the United States as a stowaway in 1996, and upon inspection provided a false name, country of citizenship and date of birth. Thus the applicant entered the United States by materially misrepresenting his identity. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. The applicant does not contest this on appeal.

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

> (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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).

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.

On appeal, counsel explains that the applicant has four children which his spouse would be left to care for if he were removed. *Brief in Support of Appeal*, received June 2, 2011. He states that the applicant's spouse, who is disabled and only has the use of one hand, has been unable to work due to the overuse of her functional hand causing numbness. He further states that the applicant's spouse had gestational diabetes which has caused her medical complications, and that she and their four children are completely dependent on the applicant financially and physically and, if he were removed they would have to apply for public benefits and their family would disintigrate. Finally, counsel notes, the applicant's spouse and their four children are dependent on the health insurance provided by the applicant's employment.

The facts asserted by counsel paint a picture of extreme physical hardship for the applicant's spouse, and the evidence that is in the record is sufficient to corroborate some of counsel's assertions. The record contains copies of birth certificates for the applicant's four children. The record contains copies of tax records and pay stubs, corroborating that the applicant provides most of the family's income. There are also copies of the family's financial obligations, evidence that the applicant's spouse would be unable to meet their financial obligations while providing for their four children if the applicant were removed. There is a brief, hand-written note from the desk of Dr. [redacted] stating that the applicant's spouse, pregnant at the time, had incurred gestational diabetes and should not

work due to the strain on her right hand. Finally, there is a single photograph of the applicant's spouse revealing her physical disability.

The documentation in the record is sufficient to establish by a preponderance of the evidence that the applicant's spouse would experience uncommon physical and financial burdens. When these factors are considered in the aggregate, they establish that the applicant's spouse would experience extreme hardship due to separation. The AAO can determine, based on certain facts that have been established in the record, that the applicant's spouse would experience significant physical hardships upon relocation.

The applicant's spouse is disabled, and only has the use of one hand. The applicant's spouse is a native of the United States, as are all of their children. There is some evidence that the applicant's spouse requires periodic medical attention, and this should be considered when evaluating the impacts on her due to relocation.

The applicant has not resided in Ghana since 1999, and claims that he has no family members in Ghana to help mitigate the impacts of relocation. Counsel asserts that the applicant would be unable to support his family if they relocated to Ghana. *Brief in Support of Appeal*, received June 2, 2011. However, no evidence, such as country conditions material or other evidence has been submitted to establish this assertion. The AAO does recognize, however, that the applicant and his spouse have four U.S. born children, a significant family tie to the United States.

When the hardships upon relocation are considered in the aggregate with the common impacts of relocation, the AAO finds that they would rise above the common impacts of relocation to a degree of extreme hardship.

As the applicant has established that a qualifying relative will experience extreme hardship upon relocation and separation, the AAO may now move to consider whether he warrants a waiver as a matter of discretion.

In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported,

> service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300 (Citations omitted).

The AAO finds that the unfavorable factors in this case include the applicant's misrepresentation and unauthorized employment. The favorable factors in this case include the presence of the applicant's spouse, the presence of his four U.S. citizen children, the extreme hardship his spouse would experience upon his removal, the applicant's opportunity for gainful employment and support of his U.S. citizen spouse and four children in the United States, and his lack of any criminal record during his residence in the United States. Although the applicant's misrepresentation and unauthorized employment are serious immigration violations, the favorable factors in this case outweigh the negative factors, therefore favorable discretion will be exercised.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.