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]

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Date: DEC 0 5 2012 Office: PHILADELPHIA, PENNSYLVANIA 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.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Philadelphia, Pennsylvania. An appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion. The motion will be granted and the underlying application remains denied.

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 entry into the United States by fraud or willful misrepresentation. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601), and on November 9, 2007, the Acting District Director denied the applicant's Form I-601, finding the applicant had failed to demonstrate extreme hardship to a qualifying relative. *Decision of the Acting District Director*, dated November 9, 2007. On December 7, 2007, the applicant appealed the Acting District Director's decision with the AAO. On July 15, 2010, the AAO dismissed the applicant's appeal. On August 16, 2010, the applicant filed a motion to reopen and reconsider the AAO's decision.

In its July 15, 2010 decision, the AAO found that the applicant had failed to demonstrate extreme hardship to a qualifying relative under section 212(i) of the Act. On motion, the applicant, through counsel, claims that the applicant's wife will suffer extreme hardship if she joins him in Ghana because their children will receive inadequate medical treatment for their medical conditions and she will lose her employment in the United States. Moreover, if she remains in the United States, she will suffer emotional hardship worrying that the applicant will be unable to receive proper medical treatment for his medical condition, and she also will suffer financially without his support.

According to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. 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. 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).

The record in support of the applicant's motion includes, but is not limited to, counsel's brief, statements from the applicant and his wife, a letter of support, medical documents for the applicant's wife and children, school records for the applicant's wife, employment documents for the applicant's wife, financial documents, household bills, and country-conditions documents on Ghana. The entire record was reviewed and all relevant evidence considered in rendering this decision.

As the applicant has submitted new documentary evidence to support his claim, the motion to reopen will be granted.

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 [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.

A waiver of inadmissibility under section 212(i) of the Act is dependent first 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 United States Citizenship and Immigration Services (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 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. 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 the present case, the record indicates that in August 1999, the applicant entered the United States by presenting a passport and visa belonging to [redacted] Based on the applicant's misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not dispute this finding.

In her declaration dated December 22, 2006, the applicant's wife claims that if she joined the applicant in Ghana, she would lose her job and the opportunity for future promotions. Additionally, she contributes to a retirement plan, and she would lose her health insurance. Documentation in the record shows that in August 2010, the applicant's wife had $22,699.52 in her 401(k) retirement plan. She also claims that even though her parents reside in Ghana and run their own business, they could not employ her and the applicant. Moreover, because of the high unemployment rate in Ghana, she would be unable to find employment. In his declaration dated August 6, 2010, the applicant states because of his lack of skills and

education, he will be unable to obtain employment in Ghana to support his family. The applicant's wife states that when she lived in Ghana, she worked as a teacher. She did not earn much, and now that she has a family, she has to earn more money that what a teacher's salary pays. She also claims that their children would suffer in the Ghanaian education system. The applicant states education in Ghana is very expensive, and they would be unable "to afford a good education" for their children.

Regarding medical care in Ghana, the applicant's wife states healthcare there is not the same as that available in the United States. She states she was recently diagnosed with high cholesterol and high blood pressure, she requires a special diet, and she would be unable to follow her diet in Ghana. Medical documentation in the record shows the applicant's wife has high cholesterol. Additionally, she states their son has breathing problems and she would worry about him in Ghana. Medical documentation in the record shows the applicant's son and daughter suffer from asthma. The applicant states the roads in Ghana are dusty, which would aggravate their children's breathing problems. Their son relies on daily medication to control his breathing problems, and the applicant would be unable to afford these medications in Ghana. Additionally, he states he suffers from diabetes, and he would be unable to receive proper care and treatment in Ghana.

The AAO acknowledges that the applicant's wife is a U.S. citizen, and that relocation abroad would involve some hardship. However, the applicant's wife is a native of Ghana, she speaks English, and she has family ties to Ghana. Additionally, the submitted documentary country-conditions evidence does not establish either that she would have difficulty adjusting to the culture, or that she would be unable to obtain employment in Ghana. Moreover, regarding the hardship that the applicant's children may experience in Ghana, they are not qualifying relatives under the Act, and the applicant has not shown that hardship to their children would elevate his wife's challenges to an extreme level. Regarding the applicant's wife's and children's medical conditions, the record lacks evidence establishing that they cannot receive treatment in Ghana or that they must remain in the United States to receive treatment. Therefore, based on the record before it, the AAO finds that, considering the potential hardships in the aggregate, the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Ghana.

Concerning the applicant's wife hardship in the United States, the applicant states his wife will suffer financially and emotionally by having to care for their children alone. He claims that because of the high unemployment rate in Ghana, any employment he may secure will only support himself and he would be unable to help support his family in the United States. In his declaration dated December 22, 2006, the applicant claims that he is the primary caretaker for their children while his wife works full-time. The applicant's wife states she earns approximately $26,000 to $29,000 a year. Documentation in the record indicates that in July 2010, the applicant's wife earned approximately $1,075 biweekly. She states she is paying off her student loans and the mortgage, and she would be unable to afford daycare for their children. She claims that without the applicant taking care of their children, she would have to pay about 73 percent of her income for daycare. Additionally, since the applicant would be unable to afford health insurance in Ghana, his wife would have to pay for his medical treatments in Ghana. The applicant states his wife is "barely able" to afford their household expenses now. In her brief dated August 6, 2010, counsel claims that if the applicant's wife is unable to pay her loans, it would affect her credit rating, which could then "harm her chances of promotion."

Additionally, the applicant states their daughter is "very attached" to him and would suffer "irreparable emotional harm" if they were separated. He claims that his wife would suffer hardship through their children's hardship.

The AAO acknowledges that the applicant's wife may suffer some emotional difficulties if she remains in the United States and the applicant returns to Ghana. While it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished his wife's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Moreover, though statements in the record refer to financial difficulties, the record does not contain evidence establishing that the applicant's wife will be unable to support herself in the applicant's absence. Additionally, the applicant's children are school-age and nothing in the record indicates that they currently require full-time childcare. The applicant has not distinguished his wife's financial challenges from those commonly experienced when a family member remains in the United States. The AAO also notes that the applicant's children may suffer some hardship in being separated from the applicant; however, the applicant has not shown that their children's hardship will elevate his wife's challenges to an extreme level. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, the AAO finds 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 AAO's dismissal of the appeal is upheld and the underlying waiver application is denied.

ORDER: The motion is granted and the previous decisions of the Acting District Director and the AAO are affirmed. The application is denied.