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

U.S. Citizenship and Immigration Services

H5

[redacted]

DATE: MAY 10 2012 OFFICE: LAWRENCE, MA

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 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,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Lawrence, Massachusetts, and was appealed to the Administrative Appeals Office (AAO). The matter was remanded to the Field Office Director to await the results of an appeal of the I-130 petition revocation. The I-130 petition has now been approved, and the waiver application is again before the AAO on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ghana who has resided in the United States since February 23, 2005 when she presented a Belgian passport in the name of [redacted] which did not belong to her to procure admission into the United States. She 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 to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with her U.S. Citizen spouse and children.

The Field Office Director concluded that the applicant failed to show her qualifying relative would experience extreme hardship given the applicant's inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated August 21, 2011.

On appeal, counsel for the applicant contends that, contrary to the Field Office Director's finding, the applicant submitted sufficient evidence to demonstrate that her spouse would experience extreme hardship given her inadmissibility. Counsel asserts that the applicant's spouse would suffer medical, financial, and psychological difficulties if he relocated to Ghana. Counsel adds that the applicant's spouse would not be able to take care of the children alone if the applicant returned to Ghana alone, and would experience emotional difficulties if he was separated from the applicant.

The record includes, but is not limited to, evidence related to visa applications, statements from the applicant and her spouse, medical records, evidence on country conditions, employment, and medical care in Ghana, financial documents, letters from the community, evidence of birth, marriage, divorce, residence, and citizenship, other applications and petitions filed on behalf of the applicant, and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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

> (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:

> (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 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 [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.

The Department of State's Foreign Affairs Manual [FAM] provides, in pertinent part:

> Materiality does not rest on the simple moral premise that an alien has lied, but must be measured pragmatically in the context of the individual case as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa....
>
> "A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, 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 which is relevant to the alien's eligibility and which might have resulted in a proper determination that he be excluded." (Matter of S- and B-C, 9 I&N 436, at 447.)

DOS Foreign Affairs Manual, § 40.63 N. 6.1. Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

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) and *Matter of S- and B-C-*, 9 I. & N. Dec. 436 (BIA 1950; AG 1961).

To establish eligibility for a non-immigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

> (B) an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleaure.

The FAM further provides:

> The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural

associations, which will indicate a strong inducement to return to the country of origin.

DOS Foreign Affairs Manual, § 41.31 N. 3.4.

In an immigration interview, the applicant attested under oath that on February 23, 2005 she used a Belgian passport which did not belong to her in the name of [redacted] to procure admission into the United States. Inadmissibility due to this incident is not contested on appeal. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation.

The record further reflects that in a 2004 application for a nonimmigrant visa, she represented that she was married to a citizen of Ghana, [redacted] who would finance her trip to the United States. The applicant later provided documentation showing she was never married to Mr. [redacted] and that she has only been married once, to her current spouse.

By claiming that she was married, when in fact she was not, when applying for a nonimmigrant visa in 2004, the applicant led the American Embassy in Accra, Ghana to believe that she had close family ties, namely, a husband, in her home country, and the financial means to pay for her trip. By making this false representation, she cut off a line of inquiry which was relevant to the applicant's request for a visitor visa. As such, the AAO finds that the applicant is also inadmissible under section 212(a)(6)(C)(i) of the Act for fraud and / or willful misrepresentation with respect to this nonimmigrant visa application. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. Citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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).

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.

The applicant's spouse contends that he has high blood pressure, which would be very difficult to treat in Ghana. A physician confirms the diagnosis, stating that the spouse's condition is poorly controlled, and opining that if uncontrolled over an extended period of time, he may be subject to the complications of hypertension which include cerebrovascular accident, myocardial infarction, congestive heart failure, and renal dysfunction. The spouse adds that his children both suffer from a hernia, and that he is concerned about obtaining medical care for them in Ghana. Counsel

submits articles on medical care in Ghana in support. The spouse also asserts that though he has a good job here, he will have a difficult time finding adequate employment, meeting his financial obligations, and supporting the family in Ghana, should he relocate. The spouse indicates that safety is also an issue in Ghana, that he worries his daughter would be subject to traditional, harmful rituals in Ghana. Evidence on country conditions and the economy in Ghana is submitted in support.

The applicant's spouse asserts that he would face extreme difficulties if the applicant returned to Ghana without him. He states that he often works from 7:00 AM to 5:00 PM and from 12:30 PM to 10:00 PM as an assistant manager at a [redacted], and leaving his children in the care of strangers would cost an exorbitant amount of money. He indicates that if the children also relocated to Ghana, the daughter would be subject to traditional rituals performed on girls her age. The spouse adds that the applicant has been a pillar of support in his and his children's lives.

Despite submission of income and mortgage statements as well as evidence of student loans, the record does not contain sufficient evidence of the spouse's or the applicant's household expenses to support assertions of financial hardship. The Form I-864, Affidavit of Support, shows that the applicant's spouse earns $37,385 a year, which is more than 125% of the minimum income requirement for a family of four. *See Form I-864P, 2012 HHS Poverty Guidelines for Affidait of Support*, March 1, 2012. Evidence of record shows that the spouse makes monthly mortgage payments of approximately $400.00. The spouse asserts that he has other monthly expenses including credit card debt, but there is no evidence on the amount of other monthly expenses.[1] Although the spouse's assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) ("Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it."). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Similarly, the record lacks evidence on how much child care would cost without the applicant present. As such, the record lacks sufficient evidence to show that the spouse's expenses exceed his income, or that arranging for child care without the applicant present would cause financial difficulties. Given the evidence of record, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

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[1] The record also contains statements from student loan providers, which show the applicant's spouse has approximately $44,000 in student loans, however, these statements do not indicate whether these loans are in repayment or what the monthly repayment amount is.

The applicant's spouse states that the applicant has been a pillar of support in his life, and he would suffer emotional distress without her. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Ghana without his spouse.

The record reflects that the applicant was born in and lived in Accra, Ghana, and that her spouse is also a native of Ghana. Even though his background gives him some familiarity with Ghanaian languages and culture, the spouse indicates that he would experience extreme difficulty upon relocation there because he would have difficulty treating his hypertension in the framework of Ghana's medical system, his daughter may be subject to traditional rituals, and he would be unable to find adequate employment to meet his financial obligations in Ghana. With respect to traditional rituals, the U.S. Department of State notes in its Human Rights Report:

> The law prohibits FGM, but it remained a serious problem in the Upper West Region of the country, and to a lesser extent in Upper East and Northern regions. Type II FGM--defined by the World Health Organization as the excision of the clitoris with partial or total excision of the labia minora--was more commonly performed than any other type. A girl was typically excised between 4 and 14 years of age. According to a 2008 study conducted by the Ghana Statistical Service with support from the UN Children's Fund, approximately 49 percent of girls and women between 15 and 49 years old in Upper West Region--where the practice was most common--had experienced some form of FGM, 20 percent in Upper East Region, and 5 percent in Northern Region.

2010 Human Rights Report: Ghana, U.S. Department of State, April 8, 2011. Though the spouse contends he fears that his daughter, if she relocated with the applicant, would be subject to this, the State Department indicates that FGM is prevalent in the upper west, upper east, and northern region of Ghana, and not in Accra, where the applicant's spouse was born and resided before coming to the United States. This report contradicts a letter in the file with respect to FGM in Accra. Given this evidence, the record does not reflect that the applicant's daughter will live in a region where FGM is found to be prevalent.

The AAO notes that the applicant's spouse may have difficulty obtaining the same level of medical care for his hypertension in Ghana as in the United States, and finding adequate employment there. However, though he may face difficulties as a result of the applicant's inadmissibility, the AAO does not find evidence of record to demonstrate that his hardship would rise above the distress commonly created when families relocate as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, or other effects of relocation on the applicant's spouse are in the aggregate above and beyond the

hardships commonly experienced, the AAO cannot find that the applicant's spouse would experience extreme hardship if the waiver application is denied and he relocates to Ghana with the applicant.

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 her U.S. Citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.