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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: APR 25 2013 Office: ACCRA, GHANA FILE:

IN RE:

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:

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 Field Office Director, Accra, Ghana. The matter 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 attempting to procure admission into the United States by presenting a fraudulent non-immigrant visa. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to live in the United States with her U.S. citizen husband and children.

The Field Office Director concluded that the applicant failed to establish that a bar to her admission to the United States would result in extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated December 12, 2011.

On appeal, the applicant's attorney states that the applicant and her qualifying spouse "admit that a waiver was needed," while also asserting that the applicant's use of "what was determined to be a false visa was an innocent mistake." Further, the applicant's attorney indicates that the applicant thought the document she used was legitimate and took legal action against the visa procurer when she returned to Ghana. The applicant's attorney asserts also that the Field Office Director failed to consider the totality of the circumstances in assessing extreme hardship, and erred by not finding that the separation of the qualifying spouse from the applicant and their children would result in extreme hardship.

The record contains the following documentation: the Application for Waiver of Grounds of Inadmissibility (Form I-601); a Notice of Appeal or Motion (Form I-290B); an appeal brief; affidavits from the qualifying spouse and applicant; identification and relationship documents regarding the applicant, qualifying spouse and their children; country-conditions documents regarding Ghana; an article regarding the person who provided false documents to the applicant; financial documentation regarding the qualifying spouse; an Application for Immigrant Visa and Alien Registration (Form DS-230); Petitions for Alien Relative (Forms I-130) with accompanying documentation; an Application for Asylum and Withholding of Removal (Form I-589) with supporting documentation and documents related to the applicant's removal from the United States. 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.

The Board of Immigration Appeals (BIA) has held that the term "fraud" in the Act "is used in the commonly accepted legal sense, that is, as consisting of false representations of a material fact made with knowledge of its falsity and with intent to deceive the other party." *Matter of G-G-*, 7

I&N Dec. 161, 164 (BIA 1956). The "representations must be believed and acted upon by the party deceived to" the advantage of the deceiver. *Id.* However, intent to deceive is not a required element for a willful misrepresentation of a material fact. *See Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975).

The term "willfully" should be interpreted as knowingly and intentionally, as distinguished from accidentally, inadvertently, or in an honest belief that the factual claims are true. *See* U.S. Department of State, *Foreign Affairs Manual* 40.63, n. 5.1; *see also Forbes v. I.N.S.* , 48 F.3d 439 (9th Cir. 1995). In order to find the element of willfulness, it must be determined that the alien was fully aware of the nature of the information sought and knowingly, intentionally, and deliberately misrepresented material facts. *Id.*

The applicant's attorney asserts that the applicant's use of a false visa was "an innocent mistake;" because the applicant thought the document she used was legitimate. Moreover, the applicant took legal action against the visa procurer when she returned to Ghana. The record reflects that the applicant used a fraudulent non-immigrant visa, for which she admitted to paying three thousand dollars, in an attempt to obtain admission into the United States. In addition, she responded affirmatively when U.S. immigration inspectors asked her after her arrival, on December 24, 2001, if she presented a passport with a fraudulent non-immigrant visa. *See Record of Sworn Statement (Form I-877A)*, dated December 24, 2001. She did not indicate that she was unaware that her non-immigrant visa was fraudulent, demonstrating that she had knowledge of its falsity and therefore her misrepresentation was willful. Moreover, although the record contains a photocopied page of an article that suggests the applicant was a victim of fraud perpetrated by a "visa contractor," the photocopy does not include the name of the publication or date the article was published. Further, the article contains conflicting information regarding her husband's name and past marital history; the details do not match her testimony in 2002 and her approved Form I-130, as outlined in the Field Office Director's decision. Though the applicant attempts to resolve these inconsistencies on appeal, the evidence submitted does not sufficiently address them. The documentation provided to support her position that her misrepresentation was not willful, namely a photocopy of an article, is not reliable. As the applicant has failed to demonstrate her admissibility, the applicant has not overcome her burden and is therefore inadmissible.

Section 212(i) of the Act provides:

> The Attorney General [now the Secretary of Homeland Security, "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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204 (a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), 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. 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.

The AAO finds that the applicant has failed to establish that her qualifying relative will suffer extreme hardship as a consequence of being separated from her. The qualifying spouse asserts that he is finding it financially difficult to maintain two homes, one in the United States and one in Ghana. He indicates that he will eventually be unable to support his family, which will put them in "a serious economic problem." He further states that the applicant has no job in Ghana due to the "bad economy." The record contains documentation regarding the qualifying spouse's income and some of his expenses, yet fails to provide a clear picture of his financial situation.

With regard to the qualifying spouse's emotional hardships, he states that he is experiencing emotional hardship because he does not live with his family. He states that he had "a very emotional day" when he found out that his son was in school crying for him. He also indicates that he is suffering because he is not present to see his sons grow up and that they only have a father "once in a while." Although it appears that the qualifying spouse is facing emotional hardships due to his separation from the applicant and their sons, the record does not establish that the hardship he is currently experiencing is beyond the hardships normally associated with separation from a spouse.

The applicant's affidavit also indicates that their children are suffering emotionally and their older son is unable to attend school for financial reasons, due to their separation from the applicant. The record, however, does not indicate how the hardships of their children are affecting the qualifying spouse. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship under section 212(i) of the Act. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardship to the applicant or his children will not be separately considered, except as it may affect his spouse.

The AAO recognizes that the applicant's U.S. citizen spouse will endure hardship as a result of continued separation from the applicant. However, his situation, if he remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The AAO concludes that based on the evidence provided

and considering the evidence in the aggregate, it has not been established that the applicant's U.S. citizen spouse is suffering extreme hardship due to his separation from the applicant.

The applicant must also establish that her qualifying spouse would suffer extreme hardship were he to relocate to Ghana to be with the applicant. With respect to this criterion, the qualifying spouse contends that he will suffer financial hardship if he had to relocate because he has a job as a long-distance truck driver in the United States and he would be unable to find the same job in Ghana. Further, he states that, even if he found work in Ghana, he would have to "take a huge pay cut and then [he] could not support [his] family." Documentation confirms that the applicant's spouse is employed in the United States. The record also contains Internet listings from www.learn4good.com, showing job opportunities in Ghana. However, the record lacks evidence to show that he would be unable to find employment in Ghana, or that if he finds work in Ghana, albeit at a lower salary, that he would be unable to provide for his family. In addition, although the record also provides proof that the qualifying spouse has sent money to the applicant, there is no evidence in the record to confirm that the applicant is financially dependent on him.

While the AAO empathizes with the qualifying spouse's potentially encountering issues upon his return to Ghana after having lived in the United States for over ten years, he was likely previously aware of the applicant's inadmissibility. The applicant and qualifying spouse, a native of Ghana, were married in Ghana and their children were born in Ghana. As such, the qualifying spouse had reason to expect at the time they were married that the applicant may not be able to live with him in the United States. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 567. As such, the applicant has not met her burden of demonstrating that her qualifying spouse will suffer extreme hardship in the event that he relocates to Ghana.

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 application for 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.