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

(b)(6)

DATE: FEB 20 2013 Office: ACCRA, GHANA File:

IN RE: Applicant:

APPLICATION: Application for Permission to Reapply for Admission under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii), and Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), and section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 Field Office Director, Accra, Ghana, denied the application for consent to reapply for admission, as well as the waiver application, and both are now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ghana who reentered the United States in 1998 using a fraudulent travel document after having been removed in 1995 pursuant to a 1994 exclusion order. He lived here until January 13, 2007, when he was again removed, after his prior exclusion order was reinstated. The Field Office Director found the applicant 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, as well as under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for one year or more. The Field Office Director also found the applicant to be inadmissible under section 212(a)(9)(C)(i) of the Act, 8 U.S.C. § 1182(a)(9)(C)(i), for having reentered the country illegally after being ordered excluded and deported. The applicant does not contest these findings of inadmissibility. He is seeking consent to reapply for admission and waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse.

The field office director determined that, as the applicant is inadmissible under section 212(a)(9)(C)(i) of the Act and his last departure from the United States on January 13, 2007 was less than 10 years ago, he is ineligible to seek consent to reapply for admission. Having denied the Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212), the director also denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) as a matter of discretion. *Decision of Field Office Director*, February 21, 2012.

On appeal, the applicant contends that USCIS erred in not finding his wife will suffer extreme hardship as a result of the applicant's inadmissibility. In support of the appeal, the applicant submits a statement and evidence purporting to establish extreme hardship to a qualifying relative, including copies of passport data pages, marriage and birth certificates. The record on appeal also includes documentation submitted in support of the original consent and waiver requests. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(9) of the Act provides, in pertinent part:

> (A) Certain aliens previously removed.-
>
> > (i) Arriving Aliens. – Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within 5 years of the date of such removal (or within 20 years in the case of a second or subsequent removal [...]) is inadmissible.
> >
> > (ii) Other Aliens. – Any alien not described in clause (i) who—

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and who seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal [...]) is inadmissible.

(iii) Exception. – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the alien's reembarkation at a place outside the United States or attempt to be admitted from foreign contiguous territory, the Attorney General [Secretary] has consented to the alien's reapplying for admission.

. . . .

(C) Aliens Unlawfully Present After Previous Immigration Violations.-

(i) In General. - Any alien who-

(I) has been unlawfully present in the United States for an aggregate period of more than 1 year, or

(II) has been ordered removed under section 235(b)(1), section 240, or any other provision of law,

and who enters or attempts to reenter the United States without being admitted is inadmissible.

The AAO finds that the Field Office Director erred in finding that the applicant is inadmissible under section 212(a)(9)(C) of the Act, 8 U.S.C. § 1182(a)(9)(C). The applicant sought asylum upon arriving in the United States without a visa in 1993. After asylum was denied, an Immigration Judge issued a removal order on June 10, 1994, and the applicant was removed on August 22, 1995. The Field Office Director found he used another person's visa in 1998 to enter the United States after being inspected and admitted,[1] and he departed on January 13, 2007.

Although the applicant was excluded and deported in 1995, he did not enter or attempt to reenter the United States without being admitted. Instead, he was inspected and admitted at a port of entry after presenting a passport and visa belonging to another individual. Therefore, the applicant is not inadmissible under section 212(a)(9)(C) of the Act. However, he remains inadmissible under section 212(a)(9)(A)(ii) of the Act and requires permission to reapply for admission under section 212(a)(9)(A)(iii) of the Act as well as a waiver of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act.

[1] However, the field office director's finding contains no details of this reentry, such as the exact date or place of entry.

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 [...].

Section 212(a)(9)(B) of the Act provides, in pertinent part:

> Aliens Unlawfully Present.-
>
> (i) In General. - Any alien (other than an alien lawfully admitted for permanent residence) who-
>
> ....
>
> (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
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> ....
>
> (v) Waiver. – The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 (Secretary) that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien....

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 U.S. citizen

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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 wife contends she will suffer emotional and financial hardship if she remains in the United States while the applicant resides abroad due to his inadmissibility. The record, however, fails to contain sufficient evidence to establish these claims.

To begin, the record contains no documentation concerning the emotional hardship that the applicant's wife states she will experience if separated from her husband, other than her own claims, but does reflect she knew of the applicant's immigration issues in 1999, two years before they married. The qualifying relative also asserts that the applicant was involved in their young children's lives and had a close relationship with them. The record reflects only that the children were approximately seven and 27 months old, respectively, when the applicant departed, and that his stepdaughter, who was in 12th grade during the 2006-2007 school year, claims to have had her grades suffer due to the applicant's absence. While hardship to persons other than a qualifying relative is relevant to the extent it represents hardship to a qualifying relative, the claim that the applicant's absence will interfere with the qualifying relative's ability to care for their children is unsubstantiated. The record does not contain evidence to support the claim that her husband's absence is causing her emotional hardship beyond the common results of removal or inadmissibility, or that she is unable to visit him to ease the pain of separation. 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)).

As for financial hardship, there is nothing on record to support the applicant's statement regarding his wife's expenses, or the claim that her income is insufficient to meet them. The record reflects that in 2008, the first year following her husband's January 2007 departure, the qualifying relative earned over $35,000. Although the record contains several years of joint tax returns, as only the qualifying relative's W-2 forms are provided, there is no clear evidence that the applicant contributed earnings to the household and, if so, the amount of such contribution.[2] Therefore, the record contains insufficient evidence to support the assertion that the applicant contributed financially to the household, or that without his physical presence in the United States his wife is experiencing financial hardship. Nor has it been established that the applicant is unable to support himself outside the United States, thereby imposing hardship on his wife. The record contains no evidence of his living expenses overseas or his income, only the qualifying relative's assertion that her husband cannot maintain households both in Ghana and the United States.

[2] Joint tax returns from different years, without supporting W-2 Forms or some other proof of the applicant's claimed self-employment income, are insufficient to establish the applicant's earnings.

The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. The situation of the applicant's wife, if she remains in the United States, is typical of individuals facing separation as a result of removal and does not rise to the level of extreme hardship based on the record. While the applicant's spouse may need to make alternate arrangements with respect to childcare, it has not been established that such planning will cause her any hardship and evidence shows they may already be in place. Based on the evidence provided, the applicant has not met his burden of establishing a qualifying relative would suffer hardship beyond the common results of removal or inadmissibility if he is unable to immigrate.

As regards establishing extreme hardship in the event the qualifying relative relocates abroad based on the denial of the applicant's waiver request, the AAO notes that the record contains limited evidence of the applicant's wife's living situation. The record suggests that she was employed and earning income in 2008, but there is no indication of family ties, community ties, or connections to the United States other than her children. USCIS databases show that the applicant's wife arrived from Ghana in 1998 at the age of 34 on a diversity visa and became a naturalized U.S. citizen in 2004. There is little documentation of her education, training, or work history[3] either in her native country or after arriving in the United States. Although official U.S. government reporting recognizes Ghana as being a developing country, the applicant provides no evidence regarding his wife's employment prospects there. It is well-established that mere diminution in earnings or the inconvenience of needing to pursue new employment does not constitute hardship that rises to the level of "extreme." We note the qualifying relative's concern that her school age children would be adversely affected by relocating to a country with a different educational system, culture, and language, but observe that Ghana has English as its official language.

The record reflects that the applicant's wife lived more than two-thirds of her life in Ghana before emigrating and, despite becoming a U.S. citizen, shows few ties to the country besides employment. Other than expressing reluctance to uproot her family, she offers no evidence her children would suffer any hardship by moving that would, in turn, cause their mother hardship that rises to the level of extreme. The AAO thus concludes that were the applicant unable to reside in the United States due to his inadmissibility, a qualifying relative would not suffer extreme hardship were she to relocate to her native Ghana to reside with her husband.

The documentation on record, when considered in its totality, reflects that the applicant has not established that his wife would suffer extreme hardship were the applicant unable to reside in the United States. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation is typical of individuals separated as a result of removal or inadmissibility and the AAO therefore finds that the applicant has failed to establish extreme hardship to his wife as required under section 212(i) of the Act.

The AAO notes that the field office director denied the applicant's Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I-212) in the

[3] The record contains a 2005 Biographic Information document (Form G-325A) from the qualifying relative listing two "Nursing Assistant" jobs as well as a job confirmation letter from a different employer.

same decision. *Matter of Martinez-Torres,* 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application. As the applicant is inadmissible under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act, no purpose would be served in granting the applicant's Form I-212.

In proceedings for application for waiver of grounds of inadmissibility, 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.