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

(b)(6)

U.S. Citizenship and Immigration Services

DATE: NOV 0 5 2013 OFFICE: LAWRENCE, MA FILE:

IN RE: APPLICANT:

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Lawrence, Massachusetts. A subsequent appeal was remanded to the Field Office Director, and then it was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a second motion. The motion will be granted, but the underlying application remains denied.

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 " " 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 was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentations made in a 2004 nonimmigrant visa application. 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. The AAO affirmed, finding the record lacked sufficient evidence to demonstrate that the applicant's spouse would experience extreme hardship either in the event of separation from the applicant or relocation to Ghana. *See AAO Decision,* May 10, 2012.

On the applicant's first motion, the AAO found although the applicant had submitted sufficient evidence to show her spouse would experience extreme hardship in the event of separation, she did not establish he would suffer extreme hardship upon relocation to Ghana. *See AAO Decision on motion,* July 3, 2013. The prior AAO decision was affirmed. *Id.*

On this second motion, counsel submits a brief, articles on country conditions in Ghana, letters from physicians, a copy of some pages of the spouse's passport, and a letter from the applicant. In the brief, counsel contends the applicant's spouse would experience immigration and safety-related, financial, and medical hardship upon relocation to Ghana.

The record includes, but is not limited to, the documents listed above, evidence related to visa applications, statements from the applicant and her spouse, medical and financial 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 applicant's second motion.

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.

On motion, counsel does not contest the applicant's inadmissibility due to her misrepresentation on February 23, 2005, when she presented a Belgian passport which did not belong to her to procure admission into the United States. Nor does counsel contest that the applicant is also inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for falsely representing in a 2004 nonimmigrant visa application that she was married to a Ghanaian citizen who would finance her trip. As such, the AAO again affirms the applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act. 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 v. I.N.S.*, 138 F.3d 1292 (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.

Counsel contends the applicant's spouse would have immigration difficulties, financial and medical hardship, as well as safety-related concerns upon relocation to Ghana. Counsel explains that even though the spouse is a native of Ghana, he will have to obtain a work permit and apply to become a resident of Ghana. Counsel adds that because Ghana is not a dual-citizenship country, the applicant will be regarded as a foreign national requiring legal status to live in Ghana. The applicant submits a copy of the spouse's U.S. passport and Ghanaian visa in support. Counsel

moreover claims that the spouse would be at risk of death in Ghana due to his medical condition. A copy of a previously submitted letter from the spouse's physician is submitted on motion. Counsel explains that the spouse will not have access to adequate medical care for his hypertension in Ghana, and that he has been under the continuous care and treatment of his United States physicians. Counsel additionally asserts the spouse, as a U.S. citizen, will be in constant fear of a terrorist attack, crime, and insecurity in Ghana. Articles on country conditions in Ghana are submitted on motion. Counsel further states that unemployment in Ghana is high, and the spouse, who has a master's degree in banking, would not be able to earn an adequate income there. Counsel lastly indicates that the applicant is pregnant again, and submits a letter from her physician as confirmation.

The applicant has not submitted sufficient evidence to demonstrate that the applicant's spouse, a native of Ghana, would have immigration-related difficulties upon relocation to that country. Although counsel submits a copy of the spouse's Ghanaian non-immigrant visa to support such assertions, counsel does not supplement the record with evidence to establish there is no process through which the applicant could obtain residency and permission to work. Nor is there any evidence to support counsel's claim that a native of Ghana would be unable to obtain dual citizenship. Given the insufficient documentation, counsel's contentions with respect to the spouse's immigration-related difficulties can be given limited weight. 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).

Furthermore, counsel's claim that the spouse would have difficulties finding employment in Ghana is viewed in light of documentation submitted previously, which indicates that the spouse lost his job in March 2012. The applicant does not claim or provide documentation indicating that the spouse has resumed employment in the United States. Without current evidence on the applicant and the spouse's current income, the AAO is not in a position to evaluate the relative financial difficulties the spouse will experience upon relocation to Ghana.

The applicant submits articles from 2009, 2010, and 2011, which were previously submitted on appeal, to establish that the spouse would experience safety-related concerns in Ghana. These articles, however, do not reflect Ghana's current country conditions, nor do they establish that the spouse specifically would be targeted for threats if he relocated to Ghana. Furthermore, the updated articles submitted do not demonstrate that the spouse would be subject to safety-related issues. The newly-submitted article, [redacted] does not indicate that a person in the spouse's position would be similarly targeted. The [redacted] dated April 3, 2013, '[redacted] states that US citizens should be on the alert for suspicious activity amid rising fears of terrorist attacks in many parts of the world. However, the U.S. Department of State has not issued a current travel advisory for Ghana, nor is there an indication on the U.S. Embassy's website that travel for the spouse, a native of Ghana, would subject him to criminal activities.

Counsel also states that the spouse may experience difficulties in Ghana related to his hypertension, and submits a previously-submitted letter from the spouse's physician in support. The AAO again acknowledges that the applicant's spouse may have difficulty obtaining the same level of medical care for in Ghana. However, though the spouse will face hardship, the AAO does not find there is sufficient documentation of record to demonstrate that his hardship would rise above the distress commonly created when families relocate as a result of inadmissibility or removal. As the applicant has failed to provide sufficient evidence to establish that 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.

As noted in the AAO's decision on the applicant's first motion, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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 application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met. Accordingly, although the motion is granted, the prior AAO decision is affirmed.

ORDER: The motion is granted, but the prior AAO decision is affirmed.