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



U.S. Citizenship
and Immigration
Services

DATE: FEB 03 2014

OFFICE: WASHINGTON FIELD OFFICE

FILE: [REDACTED]

IN RE: [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 (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,

[Handwritten signature]

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Washington, DC, denied the waiver application. A subsequent appeal was denied by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted and the prior decision of the AAO will be affirmed.

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 entry to the United States by fraud or willful misrepresentation. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and stepchild.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director*, dated June 14, 2012. On appeal, the AAO also determined that the record failed to establish the existence of extreme hardship for a qualifying relative and dismissed the appeal accordingly. *See Decision of the AAO*, dated October 3, 2013.

On motion, counsel for the applicant asserts that prior counsel provided ineffective assistance of counsel to the applicant. Counsel contends that the applicant's spouse is a recovering drug addict who would be unable to afford her expenses, including medications for depression and bipolar disorder, without the applicant's health insurance and income. Counsel also asserts that the applicant's spouse cannot relocate to Ghana because she is a citizen of the United States who attends meetings in the United States to support her rehabilitation and would be unable to find comparable care in Ghana.

In support of the motion, the applicant submitted declarations from the applicant and his spouse, medical and insurance documents concerning the applicant's spouse, and background information concerning discrimination and drug rehab in Ghana. The entire record was reviewed and considered in rendering a decision on the 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 Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General (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 Attorney General (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 applicant attempted to enter the United States, on December 9, 1985, pursuant to a United Kingdom passport belonging to another individual. The applicant does not dispute this ground of inadmissibility on motion. The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission to the United States through fraud or misrepresentation.

A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent. Hardship to the applicant is not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. 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.

In the present case, the record reflects that the applicant is a 50-year-old native and citizen of Ghana. The applicant’s spouse is a 29-year-old native and citizen of the United States. The applicant is currently residing with his spouse and stepchild in Fairfax, Virginia.

Counsel for the applicant asserts that the applicant’s spouse is a recovering drug addict who is currently taking medication for depression and bipolar disorder. Counsel contends that the applicant’s spouse, due to her mental health issues, is vulnerable to relapse upon stress. The applicant’s spouse asserts that she would be devastated upon separation from the applicant. The record contains a letter, dated August 24, 2010, stating that the applicant was admitted into [REDACTED] a program consisting of three separate phases over 15 months. The applicant’s spouse asserts that she is not undergoing any current treatment, but attends narcotics anonymous meetings.

It is noted that the record does not contain any medical or psychological documentation explaining the applicant’s spouse’s current condition, listing any prescribed medications, or detailing any potential for relapse. As noted in the AAO’s previous decision, absent an explanation from a treating physician or other provider of the nature and severity of any condition and a description of any treatment or family assistance needed, the AAO is not in the position to reach conclusions concerning the severity of a medical or psychological condition or the treatment needed.

The applicant's spouse asserts that she receives health insurance through the applicant's employer and is not employed. The applicant's spouse contends that she would be unable to afford her prescriptions without the applicant, whom she relies upon financially. The applicant's spouse further asserts that her mother also relies upon the applicant to help with her bills, and both her mother and siblings are not in a position to provide any financial support. The record contains evidence of the applicant's spouse's health insurance claims in 2013.

As noted previously, the applicant's spouse's mother submitted a letter indicating her employment in Washington, D.C. Further, the record contains evidence that the applicant's spouse was characterized as a dependent on her mother's tax returns in 2004, as she earned no taxable income of her own. The record does not contain financial documentation concerning the applicant's spouse's mother supporting the assertions that she is unable to again provide the applicant's spouse with any financial assistance.

The applicant's spouse asserts that she earned her G.E.D., but has been unable to find work because of the economy. The applicant's spouse's Form G-325A, Biographic Information, indicates that she was previously employed in the food service industry in several different positions, including server, bartender, and shift leader. It is noted that the applicant is currently employed as a manager in the food service industry. The record does not detail the applicant's spouse's attempts to secure employment and is not sufficient to demonstrate that the applicant's spouse, with her experience, would be unable to secure a position of employment upon separation from the applicant. Further, the record does not contain any updated financial documentation for the applicant or his spouse since 2007. Going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *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)). There is insufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

Counsel for the applicant asserts that the applicant's spouse cannot relocate to Ghana because she would not receive support in abstaining from drug use. The applicant's spouse asserts that she attends narcotics anonymous meetings at least once a week and that her attendance is crucial to maintaining her sobriety. The record contains background information indicating that there is only one narcotics anonymous meeting group available in Ghana and that the country lacks the type of treatment options for addiction that are available in the United States.

As noted, the applicant's spouse is a native and citizen of the United States. The record contains evidence that she has family members in the United States, including her mother and siblings. The record reflects that the applicant's spouse's mother provides her with babysitting assistance, staying with the applicant's spouse's family three to four times a week because of her work schedule in Washington, DC. The record also reflects that the applicant's spouse's sister moved into the applicant's spouse's home to care for her son when the applicant's spouse was attending her rehabilitation program. The record does not contain any evidence concerning any ties that the

applicant's spouse has to Ghana. There is sufficient evidence in the record to show that the hardships faced by the applicant's spouse, in the aggregate, would rise to the level of extreme hardship if she relocated to Ghana.

The record, however, does not contain sufficient evidence to show that the hardships faced by the qualifying relative upon separation, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984).

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 relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

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. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in balancing positive and negative factors to determine whether the applicant merits this 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 prior decision of the AAO is affirmed, and the underlying application remains denied.

ORDER: The motion is granted and the prior decision of the AAO dismissing the appeal is affirmed