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

(b)(6)

DATE JAN 2 8 2014 OFFICE: LAWRENCE, MA

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 (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 third 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 "Cynthia Boahen" 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 the second motion, the AAO affirmed that the applicant failed to demonstrate that her spouse would experience extreme hardship in the event of relocation to Ghana. *See AAO Decision on second motion,* November 5, 2013. The prior decision of the AAO was again affirmed. *Id.*

Counsel asserts in the applicant's present motion that, contrary to the AAO's findings, the applicant's spouse is now regarded as a foreign national of Ghana, and consequently would have immigration-related difficulties upon returning to Ghana. Counsel moreover contends the applicant has recently resumed employment. A brief and a paystub are submitted in support.

The record includes, but is not limited to, the documents listed above, briefs in support, 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 third motion.

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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 this third 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

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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.

On this third motion, counsel contends the applicant's spouse would experience immigration-related difficulties upon relocation to Ghana. Counsel asserts that the spouse, who is a native of Ghana, is no longer regarded as a Ghanaian as he is now a U.S. citizen. Counsel claims the spouse

would be considered by Ghanaian immigration officials as a foreign national. In support, counsel submits an excerpt from the website www.ghanaimmigration.org. Counsel states that the process is difficult, complicated, and stressful especially since the applicant's spouse renounced his Ghanaian citizenship to become a U.S. citizen. Counsel moreover indicates that it is unfair to subject a U.S. citizen, against his wishes, to such a process, especially given that he is trying to maintain family unity and provide his children with the opportunities available in the United States. With respect to the spouse's financial difficulties, counsel contends he has recently resumed employment. Counsel moreover explains that the couple has undergone stress due to a miscarriage. Counsel additionally states that the present hardship should be viewed in light of the hardship previously found.

The documentation submitted does not support counsel's assertions that the spouse, a native of Ghana who became a naturalized U.S. citizen in 2008, would have immigration-related difficulties upon relocation to his country of birth. Counsel contends the spouse is no longer regarded as a Ghanaian, but as a foreign national. However, the excerpt counsel provides from the Ghanaian Immigration Service does not indicate that Ghanaian natives who have obtained citizenship from other countries will have difficulties returning to Ghana. The excerpt instead describes the process foreign nationals will have to undergo in order to work in Ghana. Counsel has therefore provided insufficient support for contentions that the applicant's spouse will be considered a foreign national and will have to undergo difficult, stressful, and complicated processing to live and work in Ghana. Moreover, further review of the referenced website indicates that "The Citizenship Act 2000 (Act 591 section 16) allows a citizen of Ghana to hold the citizenship of any other country in addition to his Ghanaian citizenship." Dual Citizenship, Ghana Immigration Service, *available at* http://www.ghanaimmigration.org/dual_residence.htm. This is confirmed by the Ghanaian Embassy website, which states that Ghanaians who have obtained U.S. citizenship may apply for dual citizenship by submitting a Dual Nationality Application form, supporting documents, and a $200 application fee. Dual Citizenship, Ghana Embassy, Washington D.C., *available at* http://www.ghanaembassy.org/index.php?page=dual-citizenship. The Ghanaian Embassy additionally confirms that a holder of dual citizenship will be allowed to remain in Ghana without limitation if the person enters on his or her Ghanaian passport. *Id.*

As such, the AAO cannot find that the applicant has established her spouse would be subject to immigration-related difficulties upon relocation to Ghana. Additionally, although counsel asserts it is unfair to subject the applicant's spouse to such a process, the AAO notes that hardship on relocation as well as separation must be evaluated and found to exist in order for the applicant to obtain a waiver of inadmissibility under section 212(i) of the Act. The applicant's contention that her spouse would experience immigration-related and other difficulties upon relocation must therefore be fully considered by USCIS.

Furthermore, counsel provides insufficient evidence to demonstrate that the applicant's spouse would experience relative financial difficulties in Ghana. In support of assertions that the spouse has resumed employment, the applicant submits a November 27, 2013 paystub from [redacted] This one paystub, however, is insufficient evidence of the spouse's current income. The paystub, which is issued by a staffing company, indicates that in 2013 the spouse

worked one week for the company, from November 18, 2013 to November 24, 2013. The paystub does not reflect that the applicant's spouse has obtained permanent or sustained employment in the United States. Without such evidence, or evidence on the applicant's current income, the AAO is unable to determine that the applicant's spouse would experience relative financial difficulties upon relocation to Ghana.

Again, the AAO acknowledges that the applicant's spouse may experience difficulties related to medical treatment of his hypertension upon relocation to Ghana. The AAO additionally notes that the spouse may currently be experiencing emotional hardship due to the applicant's miscarriage, as reported by counsel. 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, immigration-related, 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 previously, 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.