**U.S. Department of Homeland Security**
U.S. Citizenship and Immigration Service
*Office of Administrative Appeals*
20 Massachusetts Ave. N.W. MS 2090
Washington, D.C. 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: SEP 12 2014 OFFICE: COLUMBUS 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 (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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

**DISCUSSION**: The Field Office Director, Columbus, denied the waiver application. The applicant, through counsel, appealed the Field Office Director's decision, and the Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before the AAO on motion to reopen and reconsider. The motion is granted, the prior AAO decision is withdrawn, and the underlying appeal is sustained.

The record reflects the applicant is a native and citizen of Ghana who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure admission into the United States through willful misrepresentation. The Field Office Director concluded the applicant failed to establish extreme hardship would be imposed upon a qualifying relative and denied her Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. We dismissed the applicant's appeal and affirmed the Field Office Director's decision.

On motion, counsel asserts U.S. Citizenship and Immigration Services (USCIS) abused its discretion, as the evidence demonstrates the applicant's U.S. citizen spouse would suffer extreme hardship because of the applicant's inadmissibility. Counsel also asserts new evidence demonstrates high inflation and unemployment rates in Ghana would prohibit the applicant and her spouse from providing a "stable financial and economically viable environment" and "sustain[ing] the educational and emotional needs of their children" and thereby, the children "could end up in the child labor force"; the applicant's spouse's strongest family ties are to his U.S. citizen father and brother, who do not live in Ghana; and the applicant's spouse does not maintain any family ties in Ghana, where it would be extremely difficult for him to adjust, as he came to the United States at a young age. *See Brief Submitted in Support of Motion*, dated May 14, 2014.

A motion to reopen must state the new facts to be proved and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). As the applicant has submitted new documentary evidence to support her claim, the motion to reopen will be granted.

In addition to the evidence described in our previous decisions, the record also includes, but is not limited to: a brief, additional statements by the applicant's spouse and children, a letter of support, an itemized monthly budget, and documents about conditions in Ghana. The entire record was reviewed and considered in rendering a decision on the applicant's motion.

Section 212(a)(6) of the Act provides, in relevant part:

> (C) Misrepresentation.-
>
> > (i) In general.- 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.

...

(iii) Waiver authorized.- For provision authorizing waiver of clause (i), see subsection (i).

The record reflects the applicant attempted to gain admission to the United States on January 16, 1993, by presenting to a U.S. immigration official a photo-substituted Ghanaian passport and nonimmigrant visa issued in another person's name. She therefore is inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant does not contest this finding of inadmissibility.

The record further reflects the applicant is inadmissible under section 212(a)(9)(A)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(A)(ii), for having been ordered excluded from the United States.[1]

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

(A) Certain aliens previously removed.-

...

(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

...

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 or at any time in the case of an alien convicted of an aggravated felony) 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 [now the Secretary of

[1] The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

> Homeland Security (Secretary)] has consented to the alien's reapplying for admission.

The record reflects that on January 16, 1993, U.S. immigration officials placed the applicant into exclusion proceedings. The record also reflects that on September 2, 1993, the immigration judge issued an order of exclusion *in absentia*. In response to a motion to reopen, the immigration judge reopened the exclusion proceedings, but on January 5, 1996, issued another order of exclusion *in absentia*. The record further reflects the applicant has remained in the United States to date and is subject to a final order. The applicant's exclusion order will render her inadmissible pursuant to section 212(a)(9)(A)(ii) of the Act upon her departure from the United States, and she will require permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act.

Section 212(i) of the Act provides, in relevant part:

> (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(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. Hardship to the applicant or her 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. 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-Moralez,* 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 Id.* at 568; *In re 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 BIA 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.*, *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In Re 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 (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 our previous decision, we determined the applicant's spouse would experience extreme hardship upon separation from the applicant, as the record demonstrates that he would be a single full-time parent with four children, two of whom have disabilities that require ongoing support. The record demonstrates the applicant's spouse's situation has not changed since our previous decision. Accordingly, the record continues to reflect the cumulative effect of the hardship the applicant's spouse would experience upon separation from the applicant due to her inadmissibility rises to the level of extreme.

Addressing the hardships he would experience if he were to relocate to Ghana, the applicant's spouse corroborates counsel's statements and further asserts: he has spent "all his life" in the United States, establishing a foundation for their family; their children have never been to Ghana; and he does not want his children to experience what he went through in Ghana. The applicant's eldest child also indicates his family has "dreams and aspirations" in the United States, like the applicant's pursuit of her education and career. The applicant's younger son indicates that his family does not want to go to Ghana, where they "don't have anybody … or a place to stay." Moreover, to corroborate counsel's statements about the financial hardship the applicant's spouse would experience in Ghana, the applicant submits a report by the World Bank, stating in relevant part:

> Headline inflation reached 14.0% in February, up from 13.5% registered in December 2013. . . . Inflation has been on the rise since January 2013 and the rising trend is expected to continue due to adjustments in prices of petroleum and utilities, rising prices of imported products due to the devaluation of the Ghanaian cedi, and strong demand pressures from the fiscal expansion.

*Ghana Overview*, last updated April 10, 2014.

The record demonstrates the applicant's spouse has resided in the United States for about 25 years, where he maintains close family and community ties as well as steady employment. Furthermore, addressing the treatment of individuals with disabilities in Ghana, the U.S. Department of State indicates:

> The law explicitly prohibits discrimination against persons with physical, sensory, intellectual, and mental disabilities in employment, education, health care, air travel and other transportation, and other domains. . . . Despite legal protection provided in the law, discrimination against persons with disabilities in employment and the inaccessibility of public buildings continued to be problems. . . . Persons with both mental and physical disabilities were frequently subjected to abuse and intolerance. . . . There were reports that children with disabilities were tied to trees or under market stalls and caned regularly, and that family members killed some children with disabilities.

*Country Reports on Human Rights Practices for 2013, Ghana*, issued February 27, 2014.

The record reflects that the cumulative effect of the hardship the applicant's spouse would experience as a result of the applicant's inadmissibility rises to the level of extreme. We thus conclude that were the applicant's spouse to relocate to Ghana to be with the applicant due to her inadmissibility, he would suffer extreme hardship given his length of residence in, and family and community ties to, the United States; conditions in Ghana, which would affect him financially and cause hardships to their children that would affect him emotionally; and the normal hardships associated with relocation.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, *supra* at 301. For waivers of

inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

> The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives).

*Id.* at 301.

The BIA further stated that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for section 212(h)(1)(B) relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.*

The favorable factors in this case include extreme hardship to the applicant's U.S. citizen spouse; hardship to their four children; her residence in the United States for over 20 years; her good moral character as described in letters of support; the filing of income taxes; her steady employment; and the lack of a criminal record. The unfavorable factors include the applicant's misrepresentation in 1993 and her orders of exclusion.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. 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 been met.

Although the applicant has obtained approval of Form I-601, she will need to file Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, in order to address her inadmissibility under section 212(a)(9)(A)(ii)(I) of the Act.

**ORDER**: The motion is granted. The prior decision of the AAO is withdrawn, and the underlying appeal is sustained.