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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

[redacted]

H6

Date: APR 27 2011 Office: ACCRA, GHANA FILE: A72 167 432

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

[redacted]

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ellen C. Johnson

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Ghana who was found to be inadmissible to the United States pursuant to 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 in the United States for more than one year. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside with her husband in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Field Office Director*, dated November 25, 2008.

On appeal, counsel contends the field office director failed to consider the totality of the factors, particularly considering the applicant's husband's medical condition.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, [redacted], indicating they were married on December 26, 2001; a statement from [redacted] copies of medical records, disability certificates, and other medical documentation; tax and other financial documents; a letter from [redacted] employer; letters of support; articles addressing country conditions in Ghana; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

> (i) In General - Any alien (other than an alien lawfully admitted for permanent residence) who -
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> . . . .
>
> (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.

In this case, the record shows, and the applicant does not contest, that she entered the United States in January 1997 without inspection and remained until her departure in July 2004. The applicant accrued unlawful presence from April 1, 1997, the date of the unlawful presence provisions under the Act, until her departure in July 2004. Therefore, the applicant accrued unlawful presence of over seven years. Accordingly, she is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of one year or more and seeking admission to the United States within ten years of her last departure.

A waiver of inadmissibility under section 212(a)(9)(B)(v) 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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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 *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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on a qualifying relative, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

In this case, the applicant's husband, [redacted] states that on October 2, 2007, he "sustained a serious right hip injury which incapacitated and immobilized [him] for some time." He contends he was under the care and treatment of [redacted] for a number of months and that his daily living activities were severely limited. According to [redacted] he pain was unbearable and he was unable to drive and had sleepless nights. [redacted] states that although he has "recuperated somewhat," he still has chronic pain which prevents him from doing daily activities. He contends he cannot lift anything over thirty pounds, cannot sit or stand for more than twenty minutes at a time, and experiences pain when he cooks, cleans, or bends to picks things up off the floor. [redacted] contends he needs

his wife to take care of him. *Statement of Extreme Hardship from* [redacted], dated May 25, 2008.

Documentation in the record shows that [redacted] had problems with his lumbar spine and his left shoulder in 1995, experienced left shoulder pain in June 2003, experienced lumbar and thoracic pain in May 2004, and was totally incapacitated from May 18, 2004, until May 25, 2004, due to back and shoulder pain. *Disability Certificate*, dated May 17, 2004; *Doctors Groover Christie & Merritt*, dated May 20, 2004; *Shady Grove Radiology, Reports of Consultation*, dated June 5, 2003, November 16, 1995, and April 18, 1995. [redacted] was prescribed physical therapy for four weeks in May 2004. *Physical Therapy Prescription Form*, dated May 26, 2004. In addition, a note from [redacted] states that "[d]ue to a medical problem [redacted] will be out of work from 10/15/07 through 10/31/07." *Prescription from* [redacted] dated October 12, 2007. Copies of medical records indicate [redacted] had low back pain. *See, e.g., Shady Grove Radiology, Report of Consultation*, dated October 2, 2007; *Open MRI of Germantown*, dated October 31, 2007. The record also shows that [redacted] was approved for leave under the Family and Medical Leave Act (FMLA) due to a serious health condition that began on October 2, 2007, and continued until November 15, 2007. *National Lutheran Home, Notification of Approved FMLA Leave*, dated October 31, 2007; *see also Prescription from* [redacted] dated January 10, 2008 (stating, in its entirety, that "[d]ue to extreme hardship (secondary to multiple medical problems that limit his activities of daily living), [redacted] is in need of a waiver of section 212(a)(6)(c)(i)"); *Disability Certificate*, dated October 29, 2007 (indicating [redacted] was totally/partially incapacitated from November 1, 2007, until November 15, 2007).

After a careful review of the record, the AAO finds that if [redacted] had to move back to Ghana to be with his wife, he would experience extreme hardship. The record shows that [redacted] is currently fifty-five years old. According to a letter from his employer, he has worked for the National Lutheran Home for over twenty years, since August 1988. *Letter from* [redacted] dated May 6, 2002. In addition, the record shows that [redacted] has experienced back and/or shoulder pain in 1995, 2003, 2004, and 2007. The AAO takes administrative notice that the U.S. Department of State has recognized that "[m]edical facilities in Ghana are limited, particularly outside Accra, the capital." *U.S. Department of State, Country Specific Information, Ghana*, dated August 17, 2010. [redacted] would need to readjust to a life in Ghana after having lived in the United States for more than twenty years, a difficult situation made even more complicated given his back and shoulder problems. Considering these unique factors cumulatively, the AAO finds that if [redacted] had to move back to Ghana, the hardship he would experience is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Nonetheless, [redacted] has the option of staying in the United States and the record does not show that he would suffer extreme hardship if he were to remain in the United States without his wife. [redacted] contention that he is unable to perform his own daily activities and needs his wife to take care of him is unsubstantiated by the record. Although the record shows that [redacted] has experienced back and/or shoulder pain, as stated above, there is insufficient information addressing his conditions. For instance, the notes from [redacted] fail to provide sufficient details regarding the diagnosis, treatment, prognosis, or severity of [redacted] conditions. *Prescriptions from* [redacted]

supra. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed.

To the extent the record contains financial documents, there is insufficient evidence showing extreme financial hardship to [redacted] Tax documents in the record show that [redacted] earned $42,348 in wages in 2005. *Form W-2 Wage and Tax Statement 2005.* In addition, [redacted] submitted a Form I-864, affirming he would financially support the applicant based on his salary alone of $42,348. *Affidavit of Support under Section 213A of the Act (Form I-864)*, dated September 18, 2006. Furthermore, the record does not sufficiently address the couple's regular, monthly expenses. Although the record contains a copy of a utility bill, a gas bill, and two copies of addendums to the couple's lease agreement, the addendums do not indicate the amount of rent the couple must pay monthly. *Addendums to Lease Agreement*, dated May 1, 2003, and April 20, 2003. There is no evidence [redacted]h has fallen behind in paying any of his bills. Although the AAO does not doubt that [redacted] has experienced some financial hardship, without more detailed information addressing the couple's total monthly expenses, there is insufficient evidence in the record to determine the extent of his financial hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* 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.