

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[REDACTED]

FILE:

[REDACTED]

Office: CHICAGO

Date: JUN 20 2006

IN RE:

Applicant:

[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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by fraud or willful misrepresentation. 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 and reside with her U.S. citizen husband.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated May 6, 2002.

On appeal, counsel for the applicant contends that the record lacks sufficient evidence to show that the applicant procured entry to the United States by fraud or misrepresentation, and thus she was erroneously deemed inadmissible. *Brief from Counsel*, received March 9, 2006. Counsel further asserts that the applicant's husband will suffer extreme hardship if the applicant is prohibited from remaining in the United States, and that the district director failed to engage in an analysis of relevant factors. *Id.*

The record contains a brief from counsel in support of the appeal; a copy of the applicant's marriage certificate; a copy of the naturalization certificate of the applicant's husband; verification of the applicant's husband's employment; letters from friends and associates of the applicant and her husband; a statement from the applicant's husband; documentation of the applicant's medical treatment; a copy of the birth certificate of the applicant's daughter; copies of phone bills, bank statements, insurance invoices, and tax records for the applicant and her husband; a copy of the applicant's passport; a statement from the applicant regarding her entry to the United States, and; a Form I-864, Affidavit of Support, executed by the applicant's husband on behalf of the applicant. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

- (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 that:

- (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 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 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 record reflects that in December 2000 the applicant paid approximately \$1,500 to a man in exchange for assistance in entering the United States. The applicant provided that she gave her passport to the man in Toronto on December 17, 2000. On December 26, 2000, the man returned the applicant's passport and they proceeded to the port of entry at Detroit. The applicant stated that, at the port of entry, an inspector asked the driver of the vehicle in which she was riding if any passengers were U.S. citizens. The driver reported that none of the passengers were U.S. citizens, and presented the applicant's passport to the inspector. The driver accompanied the inspector into a building, and after the applicant's documents were examined they were permitted to enter the United States. The applicant stated that she was unaware of what documents were added to her passport, yet they afforded her entry to the United States. The applicant submitted a copy of the biographic page of her passport, yet she did not provide a complete copy. Nor did the applicant indicate whether her passport contains a U.S. visa, or whether she has viewed the complete document such that she can attest to its contents.

As a citizen of Ghana who is not a permanent resident or citizen of the United States, the applicant must have a valid visa issued by a U.S. consulate or embassy in order to lawfully enter the United States. *See e.g.* U.S. Department of States Foreign Affairs Manual, 9 FAM Appendix C. The applicant's description of the process she undertook to enter the United States did not involve applying for a visa through official channels. *Applicant's Sworn Statement Regarding Her Entry to the United States*, dated February 6, 2002; *see e.g.* U.S. Diplomatic Mission to Ghana, *Visa Services* <<http://accra.usembassy.gov/www/hvisa.html>>. The applicant stated that she was unaware of what documentation was added to her passport in order for her to obtain entry to the United States. However, she affirmatively stated that her own passport was presented to an immigration inspector to gain entry. The applicant submitted a copy of several pages of her passport which reflects that she is in possession of the document. Thus, the applicant could have submitted a complete copy of her passport to clearly show what documentation or stamps, if any, were added in the process of her entry. As the applicant failed to provide a complete copy of her passport, the AAO is unable to ascertain whether it has been altered or amended. The AAO is further unable to determine whether her passport was stamped by immigration inspectors to reflect that it was in fact viewed by immigration authorities, or to determine the status in which she was admitted to the United States.

Based on the foregoing, the record strongly suggests that the applicant procured admission to the United States by fraud or willful misrepresentation, as she did not obtain a required visa by official means. The applicant has failed to establish that she entered the United States lawfully. The fact that the applicant is unable to attest to the precise documents presented on her behalf does not relieve her from the burden of showing that her entry was by lawful means. Counsel's assertion that the record lacks clear evidence of fraud or misrepresentation is not persuasive, particularly in light of the fact that essential evidence (a complete copy of her passport) was available to the applicant, yet she declined to provide it. The applicant cannot withhold definitive evidence, and then benefit from the assertion that the record lacks clear evidence.

Additionally, although the applicant contends that she entered the United States on December 26, 2000 using her passport, the copy of her passport in the record reflects that it was issued in Accra, Ghana on January 11, 2001, 16 days later. Thus, the applicant's passport is inconsistent with her claimed date of entry. It is incumbent upon the applicant to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the applicant submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The applicant has not explained or resolved this inconsistency. Doubt cast on any aspect of the

applicant's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the application. *Matter of Ho*, 19 I&N Dec. at 591.

In proceedings for application for a waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. The applicant has failed to show that she was erroneously deemed inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i).

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (BIA 1999) provides a list of factors the Bureau of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

On appeal, the applicant's husband explains that he has known the applicant for much of his life, but that they were separated when he departed Ghana in 1984. *Statement from Applicant's Husband*. He married another woman in 1993, yet they were subsequently divorced. *Id.* The applicant's husband reestablished contact with the applicant, and they were married in Ghana on November 21, 2000. *Id.* The applicant's husband states that he discovered that the applicant has high blood pressure, so he sought to gain her entry to the United States as quickly as possible so she could receive health care. *Id.* The applicant's husband expressed his desire to have at least one child with the applicant. *Id.* The applicant's husband explains that he is very satisfied to have the applicant in the United States so he can realize his goal of starting a family. *Id.*

The applicant submits a letter from a Certified Public Accountant who states that the applicant's husband has significant debt due to school loans. *Letter from* [REDACTED] dated June 19, 2002. [REDACTED] expresses the opinion that it will require the incomes from both the applicant and the applicant's husband to meet their economic needs. *Id.* The applicant's husband filed a Form I-864, Affidavit of Support, on behalf of the applicant in which he represented that he earned \$53,475 in 2000.

Counsel asserts that the applicant's husband will suffer extreme hardship if the applicant is prohibited from remaining in the United States, and that the district director failed to engage in an analysis of relevant factors. *Brief from Counsel*, received March 9, 2006. Counsel states that the district director overlooked many important elements of the applicant's case, such as the facts that applicant's husband has no family ties in Ghana, that the applicant's husband has been granted asylum in the United States reflecting that his return to Ghana is potentially unsafe, and that the applicant's husband has resided in the United States for approximately 12 years. *Id.* at 5-6. Counsel asserts that the applicant's husband would be unable to find comparable employment in Ghana as a computer programmer-analyst. *Id.* at 6. Counsel explains that the applicant's husband would suffer emotional hardship if the applicant is compelled to depart the United States. *Id.* at 7. Counsel contends that the applicant's separation from her husband goes beyond the emotional consequences commonly associated with inadmissibility, as her husband would likely be deprived of his last opportunity to start a family due to his age of 44. *Id.*

Counsel notes that the district director erroneously represented that the applicant's waiver proceeding is subject to the provisions at section 212(a)(9)(B)(v) of the Act. Counsel explains that a denial of a waiver under section 212(a)(9)(B)(v) of the Act would result in temporary inadmissibility, while denial of the applicant's waiver application under section 212(i) of the Act would result in permanent inadmissibility. *Id.* at 7-8. Counsel suggests that, accordingly, hardship in a waiver proceeding under section 212(i) of the Act should be given more careful consideration and greater emphasis when weighing equities. *Id.* at 8. Counsel asserts that, as the district director erroneously referred to section 212(a)(9)(B)(v) of the Act, he did not give enough consideration to the potential hardship of the applicant's spouse. *Id.*

Upon review, the applicant has not established that her husband will experience extreme hardship if she is prohibited from remaining in the United States. The applicant's husband reports that he wishes to start a family with the applicant, and that he is satisfied to have her in the United States with him. The AAO acknowledges that the applicant's husband will endure emotional consequences if the applicant is compelled to depart the United States. The AAO further appreciates that the applicant's husband's desires for raising children with the applicant in the United States will be thwarted if she is prohibited from remaining in the country. However, the applicant has not shown that these consequences are different or more severe than those commonly experience by the family members of those deemed inadmissible.

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS*, *supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. The applicant has failed to show that her husband will experience emotional consequences that go beyond those normally expected of the spouse of an individual deemed inadmissible.

Counsel references facts to show that the applicant's husband would experience hardship should he return to Ghana to reside with the applicant, such as a lack of family ties and job opportunities there. Yet, other than counsel's statement, the record contains no evidence or explanation to show whether the applicant's husband

has family members in Ghana. Further, the applicant has submitted no evidence to support counsel's assertion that positions are not available for computer professionals in Ghana. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

Counsel claims that the applicant's husband has been granted asylum in the United States, and thus he may face harm should he return to Ghana. Yet, the applicant's husband stated that he has returned to Ghana on more than one occasion, as recently as November 2000. The applicant's husband did not indicate that he experienced difficulty when returning to Ghana, or that he anticipates possible harm should he return.

As the applicant's husband is a native of Ghana, it is evident that he would not be faced with the challenges of adapting to an unfamiliar culture should he return there. However, as a U.S. citizen, the applicant's husband is not required to reside outside of the United States as a result of the applicant's inadmissibility.

The applicant's accountant expresses the opinion that it will require the incomes from both the applicant and the applicant's husband to meet their economic needs in the United States. Yet, the record shows that the applicant's husband earns income well above the U.S. poverty guidelines. *See Form I-864, Affidavit of Support*, dated March 2, 2001(reflecting that the applicant's husband earned \$53,475 in 2000). The applicant has not provided documentation to show that her husband would be unable to meet his financial needs in her absence.

Counsel and the applicant's husband reference the applicant's health status, including a diagnosis of high blood pressure. Counsel states that adequate medical care is not available in Ghana for the applicant's condition. However, hardship to the applicant is not a relevant concern in waiver proceedings under section 212(i) of the Act. Further, the applicant has not explained how her health status contributes to hardship for her husband.

Counsel correctly notes that the district director erroneously represented that the applicant's waiver proceeding is subject to the provisions at section 212(a)(9)(B)(v) of the Act. The AAO acknowledges that the district director cited the incorrect provision of law when referencing the legal standard under which the present waiver proceeding is adjudicated. As noted above, the correct provision of law that governs the present proceeding is section 212(i) of the Act. However, both sections 212(a)(9)(B)(v) and section 212(i) of the Act present an identical standard for assessing extreme hardship, as both require a showing that denial of the waiver "would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien." Further, there is no precedent that reflects that hardship under section 212(i) of the Act is to be given greater or different consideration than that under section 212(a)(9)(B)(v) of the Act. Thus, the applicant was not prejudiced by the district director's erroneous cite. Counsel's assertion that the district director's erroneous cite is evidence that an incorrect legal standard was applied is not persuasive.

Based on the foregoing, the instances of hardship that will be experienced by the applicant's husband should the applicant be prohibited from remaining in the United States, considered in aggregate, do not rise to the

level of extreme hardship. 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)(6)(C) 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.