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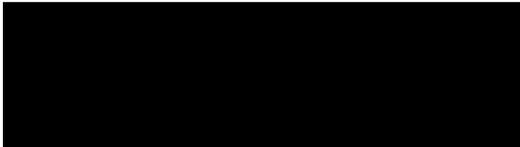
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship and Immigration Services

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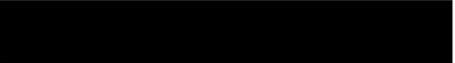


Office: SAN FRANCISCO, CALIFORNIA

Date: APR 24 2007

IN RE:

Applicant:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



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, San Francisco, California. The matter 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 is married to a U.S. citizen and is the beneficiary of an approved petition for alien relative. He seeks to adjust his status to that of lawful permanent resident (LPR); however, he was found to be inadmissible to the United States pursuant to § 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i) for having entered the United States in 1992 using a passport belonging to another individual. The record reflects that the applicant and his spouse have two U.S. citizen children. The applicant seeks a waiver of inadmissibility in order to remain in the United States with his wife and children.

The district director denied the waiver application after concluding that the applicant had failed to establish extreme hardship to his U.S. citizen spouse. On appeal, counsel asserts that Citizenship and Immigration Services (CIS) failed to give proper weight to all the hardship factors presented. Counsel maintains that the evidence establishes that the applicant's wife will suffer psychological and financial consequences rising to an extreme level should the applicant be removed. Counsel submits a brief, several articles about the Ghanaian economic situation, statements by the applicant and his wife, and other documentation. The entire record was reviewed in rendering this decision.

The AAO notes that counsel, on appeal, responds to the inconsistencies in the record that relate to the applicant's children and the bona fides of his first marriage, which were identified. In that these issues do not relate to the issues raised in this proceeding, they will not be addressed by the AAO.

Section 212(a)(6)(C)(i) of the Act provides:

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.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's admitted use of a passport belonging to another individual in order to procure admission into the United States in 1992. Counsel does not contest the district director's determination of inadmissibility, but explains that the applicant felt constrained to use someone else's passport in order to flee Ghana and come to the United States. Counsel asserts that the applicant felt he was in danger in Ghana due to his political activities. The AAO notes that there is no documentation in support of this contention, nor did the applicant ever apply for asylum in the United States.

Section 212(i) provides, in pertinent part:

(i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . .”

8 U.S.C. § 1182(i)(1). Hardship to the alien himself or to his children is not a permissible consideration under the statute. A § 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to § 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

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).

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).

In that a qualifying relative is not required to reside outside the United States based on the denial of an applicant’s waiver request, an applicant must establish extreme hardship whether he or she relocates with the applicant or remains in the United States.

The record contains several references to the hardship that the applicant’s children would suffer if the applicant were removed. Section 212(i) of the Act provides that a waiver of inadmissibility under § 212(i) of the Act is applicable solely where the applicant establishes extreme hardship as to his or her U.S. citizen or lawful permanent resident spouse or parent. Congress excluded from consideration extreme hardship to an applicant’s child. In the present case, the applicant’s spouse is the only qualifying relative under the statute, and the only relative for whom the hardship determination is permissible.

Counsel asserts that the applicant’s wife cannot move to Ghana, because she would suffer economic harm due to that country’s weak economy. The record in the instant case indicates that the applicant’s wife has been employed as a licensed vocational nurse, and the applicant had been working as a computer technician. On appeal, counsel submits several articles concerning the Ghanaian economy. The AAO has considered the

information provided by counsel in addition to well known sources such as the CIA World Factbook (last updated March 15, 2007). The evidence does not establish that the applicant or his wife, with their skills, their relatively superior education, and their fluency in English, would be unable to find employment in Ghana. The record also does not establish that the applicant's wife would suffer extreme economic harm if she remains in the United States, as there is no evidence that she is unable to work in her own field of nursing.

The AAO notes the statement submitted by the applicant's wife in which she asserts that she is only able to work part-time as a result of the psychological effects of an April 2004 miscarriage and that she will have to go on welfare if the applicant is removed. The record, however, offers no evidence that supports the claims made by the applicant's wife regarding her mental state or that she is unable to work full-time. Neither does the record offer any proof that the applicant would be unable to assist her financially from a location outside the United States.

Counsel contends that the applicant's wife would find it extremely difficult to adjust to the culture or language of Ghana, but there is no evidence that the effort to adjust would cause her to suffer to a greater degree than other spouses who accompany the removed individual to another country. The AAO notes that Ghana's official national language is English. There is also no evidence that the applicant's wife would be psychologically affected to an extreme degree by either leaving her relatives in the United States or by the separation from the applicant.

The applicant's spouse states that her own immigration history makes the possibility of the applicant's removal from the United States very stressful. She also contends that as a result of her miscarriage, she has lost interest in her job and going out of the house, and feels close to a nervous breakdown. She further claims that she fears the unstable political situation in Ghana, being the victim of crime, disease and being persecuted by the same individuals who previously targeted her husband. While the AAO acknowledges these claims, it, again, finds the applicant to have submitted no evidence to support them. The record contains no psychological evaluation of the mental health of the applicant's wife, or any country conditions information that establishes she would be at risk if she relocated to Ghana with the applicant.

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). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

Although the applicant's wife's anxiety is not taken lightly, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances. In nearly every qualifying relationship there exists affection and emotional and social interdependence, and a separation or involuntary relocation nearly

always results in considerable hardship to individuals and families. Yet in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The AAO acknowledges that the applicant's spouse will be faced with difficult challenges and emotional hardship in the event the applicant is removed. However, nothing in the record indicates that the applicant's wife's experience would be more negative than that of similarly situated individuals, such that her suffering could be considered extreme.

The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion. Accordingly, the AAO will not consider the issues raised by the inconsistencies in the applicant's record, which were identified by the District Director in his decision and addressed by counsel on appeal.

In proceedings for application for waiver of grounds of inadmissibility under § 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.