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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

FILE:

Office: CLEVELAND, OH

Date: JUN 25 2008

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Cleveland, Ohio 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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C), for having attempted to procure entry into the United States by fraud or willful misrepresentation. The applicant is married to a naturalized U.S. citizen, and the father of four U.S. citizen children. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his family.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated February 14, 2006.

On appeal, counsel contends that the applicant is not inadmissible. In the alternative, counsel asserts that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant failed to establish extreme hardship to his qualifying relative, as necessary for a waiver under 212(i) of the Act. *Form I-290B; Attorney's brief*, dated March 30, 2006.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, tax statements for the applicant and his spouse; a statement from the applicant; letters of support from family members and friends; employment letters for the applicant; and a life insurance policy for 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.

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, the AAO finds it necessary to address the issue of inadmissibility. The AAO acknowledges counsel's assertions that the applicant is not inadmissible under Section 212(a)(6)(C)(i) since his misrepresentations relating to his employment without authorization are not material. *Attorney's brief*, dated March 30, 2006. However, the record reflects that the

applicant admitted to using another individual's passport to gain admission to the United States in 1999. *Statement from the applicant*, dated November 18, 2004; *Application to Register Permanent Residence or Adjust Status*, filed May 4, 2005. He is therefore inadmissible under Section 212(a)(6)(C)(i) of the Act for having procured admission to the United States by fraud or willful misrepresentation. The AAO observes that at no point did counsel address the applicant's inadmissibility as it relates to his fraudulent use of a passport.

A section 212(i) waiver of inadmissibility resulting from a violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that inadmissibility imposes extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. The plain language of the statute indicates that hardship that the applicant or his children would experience upon his removal is not directly relevant to the determination as to whether the applicant is eligible for a waiver under section 212(i). The only hardship relevant to eligibility in the present case is the hardship that would be suffered by the applicant's U.S. citizen spouse if the applicant is removed. Hardship to the applicant's children will be considered only to the extent that it affects the applicant's spouse. If 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 Board 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 family ties to 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.

The AAO notes that extreme hardship to the applicant's qualifying relative must be established in the event that she resides in Ghana or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Ghana, the applicant needs to establish that his spouse will suffer extreme hardship. **The applicant's spouse was born in Ghana.** *Form G-325A, Biographic Information sheet, for the applicant's spouse*. The father of the applicant's spouse lives in the United States, while her mother's whereabouts are unknown. *Id.* According to counsel, the applicant's spouse does not have any family ties in Ghana. *Attorney's brief*, dated March 30, 2006. Counsel asserts that the technology and advancement of healthcare in the United States far exceeds that in Ghana. *Id.* He also contends that relocation to Ghana would have a negative financial impact on the family resulting in a complete deterioration of their standard of living. *Id.* The AAO acknowledges the assertions made by counsel. However, it notes that the record fails to include any documentary evidence to support such assertions. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. 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). Furthermore, the record does not include any documentation from a licensed health care

professional regarding any type of health condition affecting the applicant's spouse for which she would require treatment. Counsel notes that the education and opportunities that will be available to the applicant's children in Ghana cannot be compared with the education and opportunities provided in the United States. *Attorney's brief*, dated March 30, 2006. While the AAO acknowledges counsel's assertions, it notes that the applicant's children are not qualifying relatives in section 212(i) waiver proceedings and that the record fails to demonstrate how any hardship endured by the children would affect the applicant's spouse, the only qualifying relative. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in Ghana.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. As previously noted, the father of the applicant's spouse resides in the United States. *Form G-325A, Biographic Information sheets, for the applicant's spouse*. Counsel asserts that the applicant's family would experience economic hardship if he is removed to Ghana. *Attorney's brief*, dated March 30, 2006. Counsel notes that the applicant's spouse works as a nurse assistant and earns \$24,000. a year. *Id.*; *Statement from the applicant*, dated February 8, 2006. The applicant's spouse would be unable to afford day care and support the family by herself. *Attorney's brief*, dated March 30, 2006. The AAO notes that the applicant has experience working as a clerk, a temporary worker, a stock person, and a driver in the United States. *Form G-325A, Biographic Information sheet, for the applicant*. There is nothing in the record to demonstrate that the applicant would be unable to obtain a job and contribute to his family's financial well-being from a place other than the United States. Furthermore, the record fails to note whether there are additional family members who could assist with the child care responsibilities. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)).

The applicant notes that if he is not allowed to remain in the United States, his family will suffer emotionally. *Statement from the applicant*, dated February 8, 2006. 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 AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

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.

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.