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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEWARK, NJ

Date:

Relates)

NOV 24 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the waiver application. 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 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 attempting to enter the United States by fraud or willful misrepresentation in 2001 and obtaining a visa and entering the United States utilizing the fraudulently obtained visa in 2003. The applicant is the spouse of a naturalized U.S. citizen. She 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 her spouse.

The record reflects that, on July 26, 2001, the applicant appeared at Newark International Airport. The applicant presented a photo-substituted Ghanaian passport containing a fraudulently obtained U.S. nonimmigrant visa under the name [REDACTED]. The applicant was found to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act, for attempting to obtain admission to the United States by fraud and placed into secondary inspection. In secondary inspection, the applicant provided immigration officers with a false identity. She stated that she was aware that she was not entitled to enter the United States by presenting the fraudulent documentation that she had obtained. On July 27, 2001, the applicant was expeditiously removed from the United States pursuant to section 235(b)(1) of the Act, 8 U.S.C. § 1225(b)(1), under the name [REDACTED].¹ At the time of removal the applicant was informed that she was not permitted to reenter the United States for a period of five years unless she obtained permission to reapply for admission to the United States. On December 26, 2002, [REDACTED], a naturalized U.S. citizen, filed a Petition for Alien Fiancée (I-129F) on behalf of the applicant, which was approved on April 16, 2003. On July 21, 2003, the applicant submitted an Application for Nonimmigrant Visa (Form DS-156) based on the approved Form I-129F. The applicant indicated on the Form DS-156 and during her visa interview that she had never been refused admission, entry or been ordered removed from the United States. The applicant failed to reveal her alias, prior removal, her prior use of a fraudulent passport or that she required permission to reapply for admission to the United States. On August 7, 2003, the applicant was issued a K-1 nonimmigrant visa. On September 13, 2003, the applicant was admitted to the United States as a K-1 nonimmigrant with authorization to remain in the United States until December 12, 2003. On September 27, 2003, the applicant married [REDACTED]. On October 15, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based on her marriage to [REDACTED].

On September 22, 2006, the applicant filed an Application for Permission to Reapply for Admission into the United States After Deportation or Removal (Form I-212). The district director concluded that the applicant did not warrant a favorable exercise of discretion and denied the Form I-212. *See Decision of the District Director*, dated April 18, 2007. On May 15, 2007, the field office director denied the applicant's Form I-485 because she was ineligible to adjust status due to her prior removal order. *See Decision of the Field Office Director*, dated May 15, 2007. On May 17, 2007, the applicant filed an appeal of the denied Form I-212. On November 6, 2007, the applicant filed a second Form I-485, which remains pending, and the applicant filed

¹ The AAO notes that the applicant gave sworn testimony in an affidavit, dated March 2, 2007, that states that she did not provide the alias name of [REDACTED] to immigration officers at Newark International Airport and that she believes she was confused and actually signed her real name to the sworn statement that she gave at the time of her attempted entry. This statement directly contradicts the Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act (Form I-867A). The Form I-867A is signed "[REDACTED]"

an Application for Waiver of Grounds of Inadmissibility (Form I-601) with documentation supporting her claim that the denial of the waiver would result in extreme hardship to her spouse. The field office director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 accordingly. *See Decision of the Field Office Director*, dated April 2, 2008.

On appeal, counsel contends that [REDACTED] will suffer extreme hardship, as substantiated by documentary evidence. *See Counsel's Brief*, dated May 13, 2008. In support of his contentions, counsel submits only the referenced brief. The entire record was reviewed in rendering a decision in this case.

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

- (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.

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

Section 212(i) of the Act provides:

- (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 field office director based the finding of inadmissibility under section 212(a)(6)(C)(i) of the Act on the record and documentation establishing the applicant's fraud in obtaining a visa to the United States in 2001, her willful misrepresentation in obtaining a K-1 visa in 2003, and her failure to disclose her 2001 removal from the United States or her use of a fraudulent visa in her 2001 attempt to enter the United States. On appeal, counsel does not contest the field office director's determination of inadmissibility.

Hardship to the alien herself is not a permissible consideration under the statute. A section 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. 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).

Since an applicant's qualifying relative is not required to reside outside of the United States as a result of denial of the applicant's waiver request, an applicant must establish that the qualifying relative would suffer extreme hardship whether he or she remained in the United States or accompanied the applicant to the foreign country of residence. 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).

The record reflects that [REDACTED] is a native of Guinea who became a lawful permanent resident in 1998 and a naturalized U.S. citizen in 2002. The applicant and [REDACTED] do not have any children together. The applicant is in her 30's and [REDACTED] is in his 50's.

On appeal, counsel asserts that the field office director dismissed the hardship that [REDACTED] will experience should he decide to join the applicant in Ghana because the law does not require him to depart the United States. Counsel asserts that the field office director incorrectly cited to *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) to substantiate this finding. However, the AAO finds that the field office director did not cite to [REDACTED] in this manner. The field office director cited generally to [REDACTED] as guidance for finding that the common results of removal do not constitute extreme hardship. On appeal, counsel asserts that the field office director dismissed [REDACTED]'s significant health care concerns and improperly cited cases where there were no health care concerns or the applicants failed to submit any evidence of the alleged hardship. The AAO finds that the field office director did not dismiss [REDACTED] health care concerns but, as discussed below, found the applicant had failed to submit sufficient evidence to establish the hardships claimed. Furthermore, the AAO notes that the precedents cited by the field office director offer insight into what type or combination of hardships would constitute extreme hardship to the applicant's spouse.

The AAO now turns to a consideration of whether the record establishes that [REDACTED] will suffer extreme hardship if the applicant's waiver request is denied.

[REDACTED] in his affidavit, states that it was difficult for him to wait for the applicant to receive her visa to come to the United States even though he had only known her for one month. He states that he is closely connected to her. He states that he and the applicant decided to have a family together and were very upset when they lost a child in 2005. He states that they were incredibly happy when they became pregnant again, but that after five or six months, during a check-up, they were informed that the baby had died. He states that

the doctors have discovered that the applicant has a thyroid problem and is anemic, and that she is following up on these conditions. He states that they hope to become pregnant again. He states that he has high cholesterol and blood pressure for which he takes medication and that he is under a doctor's care. He states that if the applicant has to leave the United States, he does not know what he would do. He states that he has been married twice before and that he was very hurt and lonely until he met the applicant.

A prescription receipt indicates that [REDACTED] was prescribed 30 Norvasc 5mg tablets on August 4, 2006. Norvasc tablets are prescribed to treat hypertension. There is no other evidence to establish that [REDACTED] is being treated for high blood pressure or high cholesterol. The record does not provide [REDACTED] diagnosis or prognosis or indicate that he would be unable to receive treatment in the applicant's absence. Neither does it establish that treatment for [REDACTED] medical conditions would be unavailable in Ghana. Submitted country conditions materials, which include data on life expectancy, do not address the availability of health care in Ghana.

A lab report dated, dated March 15, 2006, indicates that the applicant's thyroid tests were abnormal and she was anemic and that she was informed of this on March 16, 2006. A lab report, dated May 2, 2006, indicates that the applicant's DNA is negative for the 32 most common cystic fibrosis mutations. A lab report, dated May 2, 2006, indicates that the applicant is negative for gestational mutations such as fetal OSB, down syndrome and trisomy 18. A radiological report, dated May 22, 2006, a Labor and Delivery Summary, dated May 23, 2006, and a Surgical Pathology Report, dated May 25, 2006, indicates that the applicant's fetus passed away in utero during the second trimester with evidence of edema of the scalp. A follow-up examination report, dated May 30, 2006, indicates that the applicant was experiencing light bleeding and pain upon urination after the loss of her fetus. It states that she tested positive for a urinary tract infection and was instructed to return in two weeks. A follow-up examination report, dated June 6, 2006, indicates that the applicant was doing well emotionally after the loss of her fetus and had no medical problems. It also states that the applicant was cleared to return to work and instructed to return for further follow-up in six months. A message to the applicant's chart, dated June 26, 2006, indicates that the applicant reported clotted bleeding during her first menstruation post-partum. It states that she was informed this was normal post-partum and to rest and stay off of her feet if possible. A letter from [REDACTED] dated September 11, 2006, recommended that the applicant continue to take folic acid supplements prior to conception and through the first trimester of any pregnancy. There is no other evidence to establish that the applicant or [REDACTED] are under the care of a doctor for fertility treatments. There is also no documentary evidence that demonstrates that the applicant continues to have a thyroid problem or anemia as the medical report dated June 6, 2006, indicates that she had no medical problems at that time.

A psychological evaluation, prepared by [REDACTED] a licensed psychologist, indicates that he interviewed [REDACTED] on March 3, 2007 on referral by counsel. [REDACTED] reports that [REDACTED] went to live in Ghana with his aunt after his parents were killed in an accident when he was four years old. He states that [REDACTED] feels that he can speak to the applicant about anything and that the two of them can, together, come to decision about their lives, for which, in light of his first marriage (in which he could not discuss much), he is deeply grateful. [REDACTED] states that the applicant has had two miscarriages and that she and [REDACTED] are attempting to conceive another child. [REDACTED] states that, if the applicant returns to Ghana, [REDACTED] anxiety and depression will become greatly exacerbated. He states that [REDACTED] was very clear about his inability to find employment in Ghana and the fact that he would lose the home that he owns in the United States. [REDACTED] finds that [REDACTED] has developed an adjustment disorder with mixed anxiety and depressed mood as a direct result of his fear that the applicant will have to return to Ghana.

states that has difficulty falling asleep and wakes up repeatedly during the night, his appetite is poor and he has lost approximately 12 pounds, he has difficulty focusing, concentrating and paying attention, he is persistently sad, chronically anxious and has greatly reduced sexual libido. He states that there is no suicidal ideation. concludes that it would be in the best interests of if the applicant could remain with him in the United States and they could begin the family that they so deeply desire.

While the input of any medical health professional is respected and valued, evaluation is based on a single interview with and indicates that he does not have a history of mental health issues or treatment. A psychological report based on one interview does not reflect the insight and detailed analysis commensurate with an established relationship with a mental health professional, thereby rendering Dr. findings speculative and diminishing his evaluation's value to a determination of extreme hardship. Moreover, the record does not contain evidence that has sought or received any other treatment or evaluation for anxiety and depression at any other time. Accordingly, evaluation will be given little evidentiary weight.

There is no evidence in the record that or the applicant suffers from a physical or mental illness that would cause to suffer hardship beyond that commonly suffered by individuals whose families are separated as a result of removal. Further, the record does not establish that is unable to support himself without the applicant's income. Instead, the record reflects that is employed as a laboratory technician with a salary of \$45,300. Accordingly, the record does not demonstrate that Mr. would suffer extreme hardship if he remained in the United States following the applicant's removal.

Counsel, on appeal, asserts that will experience extreme hardship if he relocates to Ghana with the applicant. Counsel asserts that has ties to the United States based on his long-term residence and employment. Counsel asserts that if accompanied the applicant to Ghana he would be unable to find employment due to the 20 percent unemployment rate in Ghana. Counsel asserts that with a \$1.74 minimum daily wage in Ghana, if did find employment, it is unlikely that what he earned would be sufficient to support his family and he would be impoverished. Counsel asserts that it is likely that Mr. would join the 31 percent of the population living below the poverty line in Ghana. Counsel asserts that suffers from high blood pressure and high cholesterol and that the applicant has a thyroid problem and anemia. Counsel asserts that the couple is desperately trying to have a child after suffering two miscarriages. Counsel asserts that if accompanied the applicant to Ghana they would be unable to obtain proper medical care due to Ghana's meager medical health care expenditure and they would have to give up their hopes of having a child if fertility treatment became necessary. Counsel asserts that, based upon World Health Organization (WHO) statistics their life expectancies would also be cut by up to 20 years. Mr. in his affidavit, states that if he and the applicant relocated to Ghana, they would be unable to receive the medical care they need.

Having analyzed the hardships counsel and claim he would suffer if he were to join the applicant in Ghana, the AAO finds that they do not constitute extreme hardship. Counsel states that Ghana has 20 percent unemployment, but submits no evidence that demonstrates that and the applicant would fall within this category. Nor does the evidence in the record describe the characteristics of the population living in poverty. Counsel asserts that would most likely earn only minimum wage and that the money earned would not provide a decent standard of living. The evidence, however, does not establish that or the applicant would be unable to earn more than a minimum wage or establish the

characteristics of the population that earns only a minimum wage. Accordingly, the record does not demonstrate that [REDACTED] and the applicant would be unable to obtain *any* employment in Ghana. While the employment they may be able to obtain may not be comparable to the employment they would have in the United States or allow for the standard of living to which they are accustomed, economic detriment of this sort is not unusual or extreme. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Ramirez-Durazo v. INS*, 794 F.2d 491, 498 (9th Cir. 1986). As discussed above, there is no evidence in the record to establish that the applicant or [REDACTED] suffer from a physical or mental condition that requires treatment unavailable in Ghana or that would cause [REDACTED] to suffer extreme hardship if he relocates. While the hardships that would be faced by [REDACTED] in relocating to Ghana, including his readjustment to the culture, economy, environment, separation from friends and colleagues, and an inability to obtain the same opportunities and medical care he would receive in the United States, are unfortunate, they are the types of hardships routinely encountered by any spouse joining a removed alien in a foreign country.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant were refused admission. Rather, the record demonstrates that [REDACTED] would face the unfortunate, but expected disruptions and difficulties that arise whenever a spouse is removed from the United States. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is a deep level of affection and a certain amount of emotional and social interdependence. While, in common parlance, the prospect of separation or relocation nearly always results in considerable hardship to individuals and families, 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, and thus the familial and emotional bonds, exist. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in section 212(i) of the Act, be above and beyond the normal, expected hardship involved in such cases. 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).

The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. citizen spouse as required under section 212(i) of the Act, 8 U.S.C. § 1182(i). 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 an application for waiver of grounds of inadmissibility under section 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. The application is denied.