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U.S. Citizenship
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Services

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FILE: [Redacted]

Office: CLEVELAND (COLUMBUS) Date: **SEP 08 2008**

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.

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

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant, [REDACTED], 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 admission into the United States by fraud or willful misrepresentation. The applicant sought a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), which the district director denied, finding the applicant failed to establish extreme hardship would be imposed on a qualifying relative. *Decision of the District Director*, dated February 2, 2006. The applicant filed a timely appeal.

The applicant was found inadmissible under section 212(a)(6)(C) of the Act, which 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.

In the denial letter the director stated that during the July 21, 2005 interview the applicant testified that he entered the United States with a fraudulent passport about August 1997.

On appeal, counsel asserts that the district director made no finding of fact on whether there was fraud or a willful misrepresentation or admission made by the applicant. He states that although the district director determined that the applicant "entered the United States with a fraudulent passport," there was no factual basis to support the legal conclusion that the applicant made any fraudulent or willful misrepresentation of a material fact in seeking to procure a visa or admission into the United States.

The record reflects that at his interview for adjustment of status [REDACTED] stated under oath to the interviewing officer that he had used fraudulent documents to enter the United States. This is noted on the Form I-485 Application for Adjustment of Status. The AAO further finds that counsel's assertion is undermined by his October 17, 2005 in which he indicated that the applicant's "entry involved the use of another person's passport when clearing immigration inspection." The notation on the Form I-485 and counsel's statement support the director's finding that the applicant's admission into the United States involved misrepresentation of a material fact as he adopted another person's identity in order to enter the United States. The applicant is therefore inadmissible under section 212(a)(6)(C) of the Act for willfully misrepresenting a material fact, his identity, so as to gain admission into the country.

A waiver is available for inadmissibility under section 212(a)(6)(C) of the Act. The section 212(i) waiver for fraud and misrepresentation states 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 waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's U.S. citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

A waiver for unlawful presence is found under section 212(a)(9)(B) of the Act, which provides that:

- (v) Waiver. – The Attorney General [now Secretary, 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.

A waiver of inadmissibility under section 212(a)(9)(B)(v) is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, who is the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. Here, the qualifying relative is the applicant's U.S. citizen spouse. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

“Extreme hardship” is not a definable term of “fixed and inflexible meaning”; establishing extreme hardship is “dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship pursuant to section 212(i) of the Act. 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.* at 565-566. The BIA indicated that these factors relate to the applicant's “qualifying relative.” *Id.* at 565-566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists “provide a framework for analysis,” and that the “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether

extreme hardship exists.” It further stated that “the trier of fact must consider the entire range of factors concerning hardship in their totality” and then “determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.” (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

Extreme hardship to the applicant’s spouse must be established in the event that she remains in the United States without the applicant, and in the alternative, that she joins the applicant to live in Ghana. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

On appeal, counsel states that extreme hardship is not defined by the Act, but by the BIA decisions in *Matter of O-J-O*, *supra*, and *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978). Counsel states that the applicant has lived in the United States for eight years, has a U.S. citizen brother living here, and has no criminal issues. Counsel indicates that the applicant’s spouse would have financial, emotional, and social hardship, especially on account of her health and age (51 years old), if separated from her husband. He states that if the applicant joined her husband in Ghana she would be forced to sever ties with her church and family. Counsel states that as shown by the Consular Information Sheet describing safety and security in Ghana and the U.S. Department of State’s report on human rights practices in Ghana, the applicant’s spouse would have difficulty adjusting to life in Ghana and would have linguistic or cultural factors that may make obtaining employment difficult. He states that the applicant’s spouse would have difficulty obtaining medication in Ghana. Counsel asserts that the district director failed to consider all of the factors in rendering the decision and applied an improperly high standard in adjudicating the waiver application.

The record shows [REDACTED] and his spouse marrying in January 2003. *Marriage Certificate*. The applicant’s mother and father live in Ghana. *Biographic Information*. In 2001, [REDACTED] earned \$27,552; in 2002 she earned \$21,565. *Form W-2*. In 2004, she earned \$30,778. *Form 1040, U.S. Individual Income Tax Return*. The [REDACTED] paid \$625 in rent each month commencing on February 1, 2005. *Lease, Basic Rental Agreement and/or Lease*. They

In her affidavit dated October 13, 2005, [REDACTED] stated that she has a close relationship with her husband. She stated that she would have an extreme financial burden if she were to lose her husband’s income as she would not be able to afford where she presently lives. She conveyed that living in Ghana with her husband would mean separating from her family members, all of whom live in the United States, and leaving her church and its dance ministry and choir services. [REDACTED] stated that she has health problems and is taking desoximetasone crème for her body; fluticasone propionate for her face; hydrochlorothiazide a water pill; and norvasc for her blood pressure.

In rendering this decision, the AAO has considered all of the evidence in the record.

Although [REDACTED] claims that she will have extreme financial difficulties and will not be able to pay her rent if she remained in the United States without her husband’s income, the submitted documentation of the rental agreement, the life insurance contract, and the car membership are not sufficient to show that she requires her husband’s income to meet monthly household expenses. In the absence of documentation of all of [REDACTED]’s household expenses, the AAO cannot conclude that her income alone is inadequate to meet

monthly expenses. The AAO notes that [REDACTED] income in 2004 is sufficient to pay rent of \$625. 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)).

Family separation is important in determining hardship. Courts have stated that “the most important single hardship factor may be the separation of the alien from family living in the United States,” and also, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted).

However, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it “was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission.” (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). In *Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994), the court upheld the finding of no extreme hardship if Shooshtary’s lawful permanent resident wife and two U.S. citizen children are separated from him. *Id.* 1050-1051. As stated in *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), “[e]xtreme hardship” is hardship that is “unusual or beyond that which would normally be expected” upon deportation and “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991)). In *Sullivan v. INS*, 772 F.2d 609, 611 (9th Cir. 1985), the Ninth Circuit stated that deportation is not without personal distress and emotional hurt.

The record conveys that [REDACTED] is very concerned about separation from her husband. The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. After a careful and thoughtful consideration of the record, however, the AAO finds that the situation of [REDACTED], if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship as required by the Act. The record before the AAO is insufficient to show that the emotional hardship, which she will experience, is unusual or beyond that which is normally to be expected upon removal. See *Hassan, Shooshtary, Perez, and Sullivan, supra*.

With regard to [REDACTED] joining her husband to live in Ghana, while political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

[REDACTED] states that she has health problems and would not have access to medicine in Ghana. The applicant, however, has not submitted his wife’s medical records, which are needed to demonstrate that she has serious health problems, and he has not shown that his wife requires medication that is not available 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)).

Counsel claims that [REDACTED] would not be safe in Ghana because it has safety and security problems such as armed robbery, business fraud, substandard aviation, and road safety problems. "General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien." *Kuciemba v. INS*, 92 F.3d 496, 500 (7th Cir. 1996) (citation omitted).

[REDACTED] indicates that she would be separated from all of her family members if she joined her husband in Ghana, and she conveys that she would be separated from her church and social activities in the United States. In *Dill v. INS*, 773 F.2d 25 (3rd Cir. 1985), the Third Circuit affirmed the BIA's decision in finding no extreme hardship to the petitioner or to the couple that raised her on account of separation, as the BIA stated that the petitioner "is an adult who can establish her own life and need not depend primarily on her parents for emotional support in the same way as a young child." The AAO recognizes that [REDACTED] adjustment to the culture and environment in Ghana would be difficult; but these difficulties will be mitigated by the moral support of her husband and in-laws, which are her family ties to Ghana.

[REDACTED] counsel claims, would have difficulty obtaining employment in Ghana for linguistic and cultural reasons. U.S. court and BIA decisions that have shown that the difficulties [REDACTED] may experience in obtaining employment in Ghana are a relevant hardship fact, but are insufficient to establish extreme hardship. *See, e.g., Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (difficulty in finding employment and inability to find employment in one trade or profession, although a relevant hardship factor, is not extreme hardship); *Santana-Figueroa v. INS*, 644 F.2d 1354, 1356 (9th Cir. 1981) ("difficulty in finding employment or inability to find employment in one's trade or profession is mere detriment"); and *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975) (difficulty in obtaining employment in the Philippines is not extreme hardship). Further, it has not been established that [REDACTED] would be unable to work and support his family.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met to establish extreme hardship if Ms. [REDACTED] were to remain in the United States without her husband, and alternatively, if she were to join him to live in Ghana. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act.

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(i) 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 not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.