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U.S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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FILE:

Office: CLEVELAND, OH

Date: APR 20 2009

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 waiver application was denied by the District Director, Cleveland, Ohio. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen/reconsider. The motion will be granted and the previous decision of the AAO will be affirmed.

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 procuring admission to the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and is the stepfather of a U.S. citizen. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The district director concluded that the applicant had 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. *District Director's Decision*, at 3, dated February 17, 2006. The AAO also concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and dismissed the Form I-290B, Notice of Appeal to the Administrative Appeals Office (AAO), accordingly. *Decision of the AAO Chief*, at 5, dated December 9, 2008.

On motion, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) made an erroneous conclusion based on the facts and submits new evidence in support of the application. *Form I-290B*, at 2, received January 12, 2009.

The record includes, but is not limited to, counsel's brief, the applicant's spouse's statement, medical records for the applicant's spouse's mother, and a psychological evaluation of the applicant's spouse by a licensed professional clinical counselor. The entire record was reviewed and considered in arriving at a decision on the motion.

The record reflects that on or about February 6, 1999, the applicant procured admission to the United States with a passport in another person's name. As a result of this misrepresentation, the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

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.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this matter, the applicant's spouse. Hardship to the applicant or his stepson is not a permissible consideration in a 212(i) waiver proceeding, except to the extent that such hardship may affect the qualifying relative. 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 (BIA 1999) provides a list of factors the Board of Immigration Appeals (BIA) deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or U.S. 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 spouse must be established whether she resides in Ghana or in the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to his spouse in the event that she resides in Ghana. Counsel states that the applicant's spouse has never traveled outside of the United States and has no relations in Ghana, there are ethnic and political tensions which make Ghana volatile for U.S. citizens, the absence of social safety nets in Ghana impact the possibility of jobless conditions, and suitable medical care is unavailable in the applicant's village. *Brief in Support of Motion*, at 3-4, undated. The record does not include supporting documentary evidence of the country conditions in Ghana that would result in danger to the applicant's spouse, prevent her from obtaining employment or endanger her health. 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 states that separating the applicant's spouse from her ailing mother, who is partially dependent on her for emotional and familial support and living in a residential care facility, would be extreme hardship. *Brief in Support of Motion*, at 6. The applicant's spouse states that she and her son have a special bond with her mother. *Applicant's Spouse's Statement*, at 1, dated January 6, 2009. The applicant's spouse states that her mother has senile dementia, esophageal reflux, urinary incontinence, hypertension, hypoglycemia, dizziness, antisocial behavior and depression. *Id.* The record includes medical records which substantiate the applicant's spouse's claims regarding her

mother's health. The applicant's spouse states that she has not been able to maintain employment, in part, due to her constant need to attend to her ailing mother and that the applicant pays for family outings when her mother leaves the facility. *Applicant's Spouse's Statement*, at 1. However, the record does not include sufficient evidence to establish what role the applicant's spouse currently plays in her mother's life, how she would feel if she left her mother behind in relocating to Ghana and if she is involved in paying her mother's nursing facility bills. The AAO also notes the applicant's spouse's personal and emotional problems as discussed in the second part of the analysis. However, the psychological evaluation does not address the emotional impact of leaving the United States or her mother on the applicant's spouse, and, as the record does not indicate that the applicant's spouse would remove her mother from the facility where she now resides, the AAO has not considered the impact on the applicant's spouse of providing care for her mother in Ghana. Based on the record, the applicant has not established that his spouse would suffer extreme hardship as a result of relocating to Ghana.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his spouse remains in the United States. Counsel states that the applicant is the sole financial provider for the family, and the applicant's spouse has not maintained any meaningful employment since 2004. *Brief in Support of Motion*, at 5. The applicant's spouse states that she has not been able to maintain employment due to her past arrest record and constant need to attend to her ailing mother. *Applicant's Spouse's Statement*, at 1. However, the record does not include evidence of an arrest record or that the applicant's spouse is unable to work. Neither, as previously noted, does the record establish the role that the applicant's spouse plays in her mother's care. The record also does not include evidence that the applicant could not find employment in Ghana and provide financial support to his family from outside the United States. In addition, the AAO notes that the applicant's and his spouse's tax returns do not indicate that he is financially responsible for his stepson.

The applicant's spouse was evaluated by a licensed professional clinical counselor (LPCC) who states that the applicant's spouse has a history of drug use, she turned her life around when she met the applicant, she has three children from three different men, she witnessed her mother being abused and left alone, she is afraid to be alone and becomes depressed when alone, she has a strong history of using drugs for coping, the applicant's support helps her to avoid using drugs again, she suffers from Major Depression, Recurrent, Severe, she has suicidal thinking, and she has a family history of cardiovascular disease and diabetes. *Psychological Evaluation*, at 1-3, dated January 7, 2009. While the AAO notes these findings, it will give little evidentiary weight to the evaluation as it is based on a single interview of the applicant's spouse and fails to provide sufficient detail and analysis to support its conclusions. The AAO notes that the LPCC indicates that her interview with the applicant's spouse is supported by the findings of a standardized psychological test that measures 25 symptoms of anxiety and depression. Although the LPCC reports the consolidated test results, she fails to identify the symptoms for which she tested or to indicate which of them characterize the applicant's spouse's emotional state. The AAO also notes that the LPCC's conclusions are based, in great part, on the personal history provided by the applicant's spouse during her interview, specifically her history of drug abuse. The record, however, fails to establish that the applicant's spouse has ever abused drugs; that she, as she informed the LPCC, was ever arrested and convicted of drug possession; or received in-patient treatment for drug abuse. Going on record without

supporting documentation is not sufficient to meet the applicant's burden of proof in 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)). Based on the record, the AAO finds the evaluation's findings to be speculative and of diminished value in determining extreme hardship. Accordingly, the applicant has not established that his spouse would suffer extreme hardship if she were to remain in the United States without him.

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.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to 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(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. Here, the applicant has not met that burden. Accordingly, the previous decision of the AAO is affirmed.

**ORDER:** The previous decision of the AAO is affirmed.