



U.S. Citizenship  
and Immigration  
Services

H2

FILE: [REDACTED] Office: COLUMBUS, OHIO

Date: **DEC 09 2009**

IN RE: [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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Columbus, 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)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation on December 23, 1993. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

In his decision, dated January 5, 2007, the district director found that the applicant failed to demonstrate that his spouse would experience extreme hardship as a result of his inadmissibility. The application was denied accordingly.

The record indicates that on December 23, 1993, the applicant presented a Gabonese passport in the name of [REDACTED] in an attempt to gain entry into the United States. At the time of his arrival the applicant gave a sworn statement claiming political asylum. On May 31, 1995, an immigration judge in New York, New York granted the applicant asylum, but on appeal the decision was sustained. On March 6, 2001 the decision of the immigration judge was overturned by the Board of Immigration Appeals and the applicant was ordered excluded and deported from the United States. On September 26, 2003 the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) in connection with an approved Alien Relative Petition (Form I-130) filed by his U.S. citizen spouse. On December 22, 2006 the applicant filed a waiver application for the ground of inadmissibility under section 212(a)(6)(C)(i) of the Act.

On appeal, counsel states that at the applicant's asylum hearing the immigration judge did not make a finding of fraud, that fraud was addressed, but the court found no evidence of fraud as the applicant was fleeing persecution and told inspectors upon his arrival that his passport did not belong to him.

The Notice to Applicant for Admission Deferred for Hearing Before Immigration Judge (Form I-122), dated December 23, 1993, indicates that the applicant "presented a Gabonese passport in the name of [REDACTED] to an Immigration Inspector for admission. The applicant gave his sworn statement claiming political asylum, was charged with fraud and placed into exclusion proceedings contemporaneously with the applicant's acts. The AAO notes that the burden of proving admissibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. While counsel contends that the applicant never presented fraudulent documents to U.S. officials for entry into the United States, the record contains sufficient evidence that the applicant did in fact make a material misrepresentation by presenting the fraudulent passport to U.S. officials in order to procure admission to the United States. It was after this material misrepresentation that he admitted his true identity and requested the opportunity to apply for asylum. This case is therefore distinguished from cases in which aliens used fraudulent documents only *en route* and did not present them to U.S. officials for admission, but, rather, immediately requested asylum. *See, e.g., Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *cf. Matter of Shirdel*, 18 I&N 33 (BIA 1984). In the applicant's case, it appears he only revealed his true identity after having unsuccessfully attempted to procure admission by fraud. The

district director's determination of inadmissibility is therefore affirmed. The question remains whether he qualifies for a waiver.

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 the applicant's U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the applicant experiences is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent. 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 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 applicant has established extreme hardship to a qualifying relative pursuant to section 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.

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).

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 notes that extreme hardship to the applicant's spouse must be established in the event that she resides in Ghana and in the event that she resides in 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.

The record of hardship includes a statement from the applicant's spouse and a letter from the applicant's church. In a statement, dated December 15, 2006, the applicant's spouse asserts that she and the applicant are members of the Seventh Day Adventist Church and they strongly believe in marriage. She states that if the applicant leaves the United States it will create a situation of extreme hardship that she cannot bear. She states that they do not believe in divorce and if the applicant leaves the United States it will cause her severe emotional problems as he is the only person she has in her life and the loss of his presence, love, and support will seriously affect her.

In a letter from the pastor of the applicant's church, dated December 20, 2006, [REDACTED] states that the applicant and his spouse are active members of the church, that the church does not believe in divorce, and that the applicant's departure from the United States will cause economic, emotional, and psychological hardship for the applicant and his spouse.

The AAO notes that the evidence presented in the current record does not meet the applicant's burden of proof in establishing extreme hardship. The applicant's spouse does not submit documentation to support her claims of emotional hardship or the pastor's claims of economic hardship. 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)). Furthermore, the applicant's spouse makes no claims in regards to the hardship she would experience if she relocated to Ghana in order to reside with the applicant. Thus, the AAO finds that

the current record does not support a finding that the applicant's spouse will suffer extreme hardship as a result of the applicant's inadmissibility.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's parents 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 appeal will be dismissed.

**ORDER:** The appeal is dismissed.