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

Office: BOSTON, MA

Date: JUL 01 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.

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).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Boston, Massachusetts, 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 April 21, 1999. 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).

The district director concluded that the applicant failed to show extreme hardship to his U.S. citizen spouse as a result of the applicant's removal from the United States. The application was denied accordingly. *Decision of the District Director*, dated June 9, 2006.

On appeal, counsel asserts that the applicant's spouse would suffer extreme hardship as a result of the applicant's inadmissibility to the United States. He states that the applicant would suffer extreme hardship as a result of relocating to Ghana and if she were separated from the applicant. *Counsel's Brief*, dated July 10, 2006.

The record indicates that on April 21, 1999, the applicant presented the Canadian immigration documents of his brother to gain entry into the United States.

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 due to separation is not considered in section 212(i) waiver proceedings unless it causes hardship to the applicant's spouse and/or parent.

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).

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.

Counsel states that the applicant's spouse will suffer extreme hardship in the form of medical, emotional, and financial hardship if the applicant is forced to leave the United States. *Counsel's Brief*, dated July 10, 2006. Counsel states that the applicant's spouse would not be able to support herself without the applicant's income, that if the applicant relocates to Ghana they will have to support two households and the applicant's wages would be substantially lower than in the United States. *Id.*

Counsel states that the applicant's spouse suffers from a mood disorder and asthma and that in Ghana she will not be able to find comparable medical facilities or reliable access to prescription drugs. *Counsel's Brief*, dated July 10, 2006. He states that without proper medical attention her conditions will worsen and her health will be in danger. He also states that the applicant's spouse has no family or financial ties outside the United States and is very close to her mother. In support of his asserts regarding the applicant's relocation to Ghana, counsel submits the 2005 State Department Country Report on Human Rights in Ghana, dated March 8, 2006 and the a State Department Bureau

of Consular Affairs Consular Information Sheet for travelers to Ghana, dated June 14, 2006. Counsel states that the State Department Country Report on Human Rights in Ghana states that violence against women remained a significant problem and sexual harassment and discrimination against women in the workplace and in educational institutions was common. Counsel further states that the Consular Information Sheet for Ghana warns of rising rates of crime including violent crimes, armed robberies, pick pocketing, purse snatching, and other scams. *Id.* The AAO notes that the Consular Information Sheet for Ghana also states that medical facilities are limited, particularly outside the capital city of Accra and that travelers should carry a supply of any needed prescription medicines, along with copies of the prescriptions, including the generic name for the drugs, and a supply of preferred over-the-counter medications. *Consular Information Sheet*, dated June 14, 2006.

The record contains a joint affidavit from the applicant and his spouse. The applicant's spouse states that the hardship she would suffer as a result of the applicant's inadmissibility goes far beyond mere emotional and financial hardship and that the applicant's departure would destroy everything they have worked to build. *Joint Affidavit*, dated July 3, 2006. The applicant's spouse states that she cannot move to Ghana as she is being currently treated for a mood disorder and asthma. She states that she needs to be under the supervision of her doctor, whom she knows and trusts, she fears the climate change in Ghana would worsen her asthma, and that she would not be able to receive the same level of medical care in Ghana. The applicant's spouse also states that she cannot move to Ghana because of the conditions women face there and the quality of education, as she plans to return to school. The applicant's spouse states further that she is not working because of her medical conditions, that she relies on the applicant for financial support and would suffer financial hardship if he were removed. Finally, she states that if the applicant relocated to Ghana without her she would be emotionally devastated. *Id.*

The record contains copies of the applicant's spouse's prescriptions for Trileptal and an Albuterol inhaler. The record does not contain any documentation from the applicant's spouse's prescribing doctor describing the applicant's spouse's conditions, particularly in reference to her mood disorder and the reasons for a prescription of Trileptal.

The record also contains financial documentation showing a bank account, with negative balances, a life insurance policy taken out by the applicant with his spouse named as the beneficiary, and a rental lease showing that the applicant and his spouse pay \$900 in monthly rent.

The AAO notes that the record indicates that the applicant suffers from two medical conditions: a mood disorder, a condition that has not been sufficiently described in the record, and asthma. The record also indicates that the applicant's spouse would not have access to proper medical care or prescriptions in Ghana. In addition, she has no family ties outside the United States. Thus, the AAO finds that the applicant's spouse would suffer extreme hardship as a result of relocating to Ghana.

However, the current record does not indicate that the applicant's spouse would suffer extreme hardship as a result of separation. The applicant's spouse states that she would suffer emotional and financial hardship, but the current record does not support these statements. The financial documentation submitted shows that the applicant and his spouse have a joint checking account with

a negative balance and monthly rent in the amount of \$900. This documentation does not show how the applicant supports the household and how in his absence the applicant's spouse would suffer financially. The applicant's spouse also fails to include any details or supporting documentation regarding the emotional hardship she will experience as a result of the applicant's inadmissibility.

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)). Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 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).

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 appeal will be dismissed.

ORDER: The appeal is dismissed.