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FILE:

Office: NEW YORK, NY

Date: **MAY 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, New York, New York, 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 attempted to procure admission into the United States by fraud or willful misrepresentation on June 12, 1996. The applicant is married to a U.S. citizen and has two U.S. citizen children. She 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's spouse's expressed hardship and the lack of emotional and psychological support, cannot be found to be extreme because it is an expected result of separation. The application was denied accordingly. *Decision of the District Director*, dated April 8, 2008.

On appeal, counsel submits documentary evidence substantiating the severe psychological trauma and financial hardship that the applicant's spouse would suffer if he were separated from the applicant. Counsel states that based on this new evidence, the applicant requests that the denial of her waiver application be reversed. *Counsel's Brief*, dated June 5, 2008.

The record indicates that on June 12, 1996, the applicant presented a U.S. passport in the name of [REDACTED] in an attempt to gain entry into the United States.

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a Form I-601 waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, the eligibility to apply for a waiver.

In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made before the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

*Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service*, dated April 8, 1998 at 3. Thus, the applicant is eligible to apply for a waiver under section 212(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 the applicant’s U.S. citizen or lawful permanent resident spouse and/or parent. Hardship the applicant or his children experience 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 he resides in Ghana and in the event that he resides in the United States, as he 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 emotional and financial hardship in the event that the applicant is removed to Ghana. *Counsel's Brief*, dated June 5, 2008. Counsel states that the applicant's spouse immigrated to the United States in 1981 from Ghana, has lived in the United States for twenty-seven years; and has a sister who lives in the United States, four biological children from a previous relationship who are U.S. citizens, and two U.S. citizen step-children. Counsel states that the applicant's spouse supports all six children, pays for their tuition at school, and regularly visits with his biological children, and that the applicant's two children believe that he is their biological father. Counsel states that the applicant's spouse has been working as an inventory clerk in surgical services at New York University Hospital for Joint Diseases for the past seventeen years and he currently earns a salary of \$30,000 per year with excellent health benefits provided for himself and his family. Counsel states that the applicant's spouse also works as a taxi driver to supplement this income.

Counsel states that the applicant's spouse is committed to the applicant, that the applicant supported him psychologically when his first wife suddenly filed for divorce, and that although the applicant's spouse is the primary income earner for the family and works two jobs, the applicant cares for the children, supplements the family's income by styling hair and is training to become a nurse.

Counsel asserts that the stress caused by the applicant's immigration problem is resulting in increased anxiety and depression for the applicant's spouse. Counsel states that the applicant's spouse has battled psychological problems for many years, the applicant is able to help her spouse control his depression, but being separated from her will propel the applicant's spouse into a deep depression. Counsel states that the applicant's spouse has not sought treatment for his anxiety and depression, largely because of the cultural stigma against receiving treatment, rather than his lack of a diagnosable mental condition. Counsel states that if the applicant's spouse relocates to Ghana, his condition would be severely exacerbated as his self worth would decrease in reaction to his inability to care for his family and the lack of available treatment would result in a mental breakdown. Counsel also expresses concern for the applicant's spouse's immune resistance to malaria, his susceptibility to contracting malaria and his not being able to receive adequate treatment for the disease.

Counsel states that if the applicant is removed to Ghana and the applicant's spouse remains in the United States he will suffer financially as he relies on the applicant's supplemental income to maintain their household. Counsel asserts that it maybe in the applicant's children's best interest, as

U.S. citizens, to stay in the United States and that the applicant's spouse would find it to be an incredible financial and emotional strain to support six children without the help of the applicant.

Counsel states that without the applicant it will be impossible for the applicant's spouse to emotionally support and raise his stepchildren and that moving to Ghana to be with the applicant would mean that he would have to leave his four biological children in the United States without a father.

Counsel also states that although the applicant's spouse's eight siblings and mother live in Ghana, he no longer feels a connection to the country because he has been living in the United States for twenty-seven years. Counsel states that if the applicant's spouse were to move to Ghana he would be forced to take a low-paying job, such as farming or trading. Counsel submits a Human Development Report from the United Nations, which states that in Ghana 44.8% of workers earn less than one dollar per day, with 78.5% earning less than two dollars per day. Counsel states that at this earning level the applicant's spouse would not be able to support his family in Ghana as well as his four children in the United States. Counsel asserts that the applicant's spouse does not have an advanced level of education or technical skills and that in Ghana he would be likely to earn only one to two dollars per day. Counsel also submits evidence of country conditions in Ghana stating that the dismal economic conditions, inadequate health care and water supply, and the alarming risk of contracting a serious disease would constitute an extreme hardship should the applicant's spouse relocate to Ghana. *Id.*

In addition to the country condition information cited above, the United Nations report indicates that the life expectancy in Ghana 59.1 years old, that Ghana ranks sixty-fifth among one hundred and eight developing countries, and the per capita gross domestic product in 2005 was \$2,480. The record also includes a report from the World Health Organization on Malaria; and a report entitled "Africa Fighting Malaria", dated May 2008.

The applicant's spouse states that he and the applicant were married on August 28, 2007. *Spouse's Statement*, dated March 19, 2008. He states that if the applicant is removed to Ghana the economic conditions there will not allow for her to be gainfully employed and that the loss of his wife's financial support would constitute a significant hardship. He also states that he and the applicant depend on each other for emotional and psychological support and they would be completely devastated if they were to be separated for the rest of their lives. Finally, the applicant's spouse states that the applicant does not have an alternative means of immigrating to the United States and that if she is removed to Ghana, she will most likely not be able to return to the United States and the family will not be reunited. *Id.*

The record also contains a psychological report by [REDACTED], who states that she interviewed the applicant and her spouse on May 26, 2008. *Psychological Report*, dated May 27, 2008. [REDACTED] states that the evaluation consisted of a psychological examination and psychosocial assessment with the Beck Depression Inventory and the Personality Assessment Inventory being administered. Dr. [REDACTED] states that although the applicant's spouse has no history of psychiatric treatment and does not display symptoms of any debilitating mental illness, the applicant's immigration problems have caused

him extreme distress and he has developed symptoms of depression and anxiety. The applicant stated to [REDACTED] that she has noticed an increase in her spouse's consumption of alcohol and that he drinks more when he is sad and that without her he might think about hurting himself. [REDACTED] states that if the applicant's spouse moved to Ghana he would most certainly become destitute because of the economic conditions in the country. [REDACTED] concludes that the applicant's spouse is in an especially vulnerable state, that his symptoms of depression and anxiety indicate that he is vulnerable to stress and loss, and that an increase in stressors contributing to this state would result in a debilitating exacerbation of his emotional problems. *Id.*

Although the input of any mental health professional is respected and valuable, the AAO notes that there are several reasons why [REDACTED] findings of are diminished value in determining extreme hardship. The submitted report is based on one interview between the applicant, the applicant's spouse and [REDACTED]. The report fails to reflect an ongoing relationship with the applicant's spouse or any course of treatment for the stress and anxiety suffered by the applicant's spouse. Moreover, [REDACTED] states that the Beck Depression Inventory and the Personality Assessment Inventory were administered, but does not give the results of their administration. Finally, [REDACTED] reaches conclusions regarding the country conditions of Ghana, but has not provided any documentation to establish herself as an expert on the economy and/or living conditions in Ghana.

The AAO finds that based on the applicant's spouse's significant family ties to the United States, in particular his four biological children, his length of residence in the United States, his employment in the United States and the economic conditions in Ghana, the applicant's spouse would suffer extreme hardship if he relocated to Ghana to be with the applicant.

However, the AAO does not find that the current record has established that the applicant's spouse would suffer extreme hardship as a result of being separated from the applicant. The applicant's spouse claims that without the applicant's income he will suffer financial hardship, but does not submit evidence of a family budget and/or the applicant's contributions to paying the family expenses. In addition, counsel and the psychological evaluation reference past psychological problems suffered by the applicant's spouse but fail to submit documentation regarding these problems.

The AAO notes that 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 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).

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 she 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.