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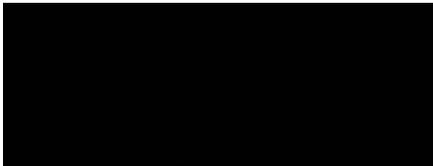
U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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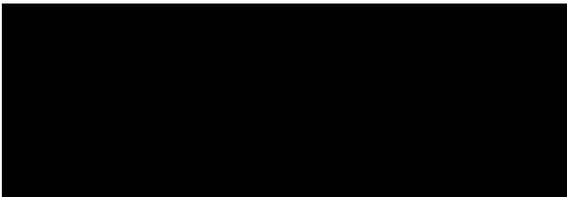


FILE:  Office: ACCRA Date: SEP 29 2009

IN RE: Applicant: 

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied by the Field Office Director, Accra, Ghana. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the Form I-601 denied.

The applicant, [REDACTED] 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). The applicant seeks a waiver of her ground of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), to join her naturalized U.S. Citizen spouse, [REDACTED]

The district director found that the applicant had failed to establish a qualifying family member would experience extreme hardship if the applicant were refused admission into the United States. The Form I-601 was denied accordingly.

On appeal, counsel asserts that the applicant's misrepresentation was not material. Counsel states that the denial erroneously states that the applicant applied for the 2008 Diversity Visa. Counsel states that the applicant's spouse has visited the applicant in Ghana twice in 2008. Counsel states that the applicant's spouse has consulted with a military health care professional for a psychiatric evaluation.

Counsel noted that a psychiatric evaluation of the applicant's spouse, copies of the applicant's spouse's passport stamps, and other documentary evidence would be submitted to the AAO shortly after filing the appeal. Counsel indicated on the Notice of Appeal (Form I-290B) that a brief and/or additional evidence would be submitted to the AAO within 30 days. The appeal was filed on November 28, 2008. As of the date of this decision, the applicant has not furnished a brief or any additional documentary evidence. Therefore, the record will be considered complete for purposes of issuing a decision on the appeal.

The record contains, but is not limited to, statements from the applicant and her spouse, and letters from [REDACTED] U.S. Navy, [REDACTED] Air Officer, USS WASP, and [REDACTED] Chaplain, USS WASP. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

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)(1) of the Act provides that:

The Attorney General [now Secretary, Department 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 misrepresentations in the applicant's case are intertwined with several of her applications for immigration benefits. For this reason, the AAO will quote the director's finding of inadmissibility in full. In issuing a determination of the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act, the director noted the following:

You indicated on your Form DS-156K Nonimmigrant Fiancée Visa Application, adjudicated on May 1, 2005, that you had never been married. Yet there is a Certificate of Marriage on file between you and [REDACTED], reciting that the two of you married on October 9, 2002. You were processed as the spouse of a Diversity Lottery winner on September 13, 2004. Both you and your husband at the time listed the same information for the U.S. based contact person your visa application form asked you to identify: [REDACTED]. That appears to be your present spouse.

Later, your first husband was disqualified from diversity visa eligibility due to inability to meet job requirement prerequisites. One week after your May 19, 200[5] marriage to your present husband, you procured a family declaration confirming the dissolution of a Ghanaian customary marriage between yourself and your first spouse, and on May 31, 2005 a Notice of Registration of Dissolution of Customary Marriage was issued by the Kumasi, Ghana Registrar of Marriages. Years after the facts it alleged, your family declaration indicated that your customary marriage had ended on February 10, 2003. In addition, data entry input dating from between October 4 and December 3, 2006 shows that you applied for the 2008 diversity visa program listing your marital status as single. Yet you have submitted a July 9, 2008 statement declaring itself to have been made under penalty of perjury that denies you had ever applied for the DV (Diversity Visa) Lottery.

The foregoing documentation displays a pattern of manipulation and deceit. Such a context makes clear that you have deliberately and repeatedly assumed whatever marital status seemed best calculated to enable you to procure a visa to the U.S. At the very least, your misrepresentations tended to cut off lines of inquiry having the potential to result in the refusal of your visa applications.

As evidenced by the director's decision, the misrepresentations in the applicant's case are rooted in her marriage to [REDACTED]. The record contains an attestation from the applicant, dated September 7, 2008, in which she asserts that she did not have a valid marriage to [REDACTED]. The attestation provides the following:

The Consul asked me if I have ever been married before and I answered 'no.' [REDACTED] proposed to me, I accepted, and we registered a marriage certificate. However, the customary rites were not performed, and my church did not

host a wedding ceremony, two things necessary in order for a marriage to be considered valid.

I later found out that [REDACTED] concealed the presence of another woman in his life, which whom he has children. This woman claimed to be [REDACTED] wife and threatened me. I have never confirmed whether [REDACTED] was married to this woman before we registered our marriage certificate. Upon this discovery, I filed for dissolution of the marriage agreement. The dissolution was finalized before my husband, [REDACTED], filed the I-129F Petition for me.

I have never applied for the DV Lottery and did not know that [REDACTED] had applied for the DV Lottery as a married man (to me) until the Consul revealed this information at my Fiancee visa interview.

At the time, I told the Consul that I was not married for two reasons: (1) I did not think my marriage to [REDACTED] was a valid marriage since customary steps were never taken; and (2) he deceived me into marrying him by lying about his past and about this woman who may or may not have been his wife when [REDACTED] proposed to me.

The AAO finds that the applicant's claim that she was not married to [REDACTED] to be unpersuasive. The U.S. Department of State's Reciprocity Schedule for Ghana provides, "Most marriages are performed under customary law, and written records are kept only if the couple chooses to register the marriage with the local council."¹ The applicant's assertions that the customary rites for her marriage were not performed and her church did not host a wedding ceremony are not corroborated by documentary evidence, such as affidavits from friends and family members. 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)). Further, the applicant presented herself to the U.S. government as married to [REDACTED] on an immigrant visa application that bears her signature, which was filed by [REDACTED] on January 20, 2004.

Moreover, documentation in the record reflecting the legal dissolution of the applicant's marriage to [REDACTED] serves as prima facie evidence that their marital relationship was recognized under Ghanaian laws. The U.S. Department of State's Reciprocity Schedule provides, "Certificates for the dissolution of a civil marriage may be obtained from the court that granted the divorce. Proper documentation of the dissolution of a customary marriage is a decree, issued by a high court, circuit court or district court under the Matrimonial Causes Act of 1971 (Act 367), Section 41(2), stating that the marriage in question was dissolved in accordance with customary law."² In *Matter of Kodwo*, the Board of Immigration Appeals (BIA) modified its decision in *Matter of Kumah*, 19 I&N Dec. 290 (BIA 1985), to hold that "affidavits executed by the heads of household, i.e., the fathers of the husband and wife, may be sufficient under Ghanaian law to establish the dissolution of a customary tribal marriage." 24 I&N Dec. 479, 482 (BIA 2008). The BIA noted that "in accordance

¹ http://travel.state.gov/visa/frvi/reciprocity/reciprocity_3568.html

² *Id.*

with the Foreign Affairs Manual, the desirable proper documentation continues to be a court decree, both because customary divorce is more difficult to prove and because polygamous marriage is permissible under the customary law of some groups, but not under civil law.” *Id.*

In the present case, the record reflects [REDACTED] the applicant’s father, [REDACTED] and [REDACTED] father, [REDACTED], filed a declaration in the Superior Court of Judicature, High Court of Justice, Accra, stating that a marriage was contracted between the applicant and [REDACTED] in accordance with the Ghanaian Customary Marriage Laws and Usages on October 5, 2002 at Kumasi in the presence of elders of both parties. The declaration further provides that due to misunderstandings between the couple the marriage was dissolved on February 10, 2003 in Kumasi in the presence of elders of both parties. The record contains a Certificate of Divorce issued by [REDACTED] Justice of the High Court, Kumasi, certifying the dissolution of the applicant’s October 5, 2002 marriage to [REDACTED] and a document entitled, Notice of Registration of Dissolution of Customary Marriage, dated May 31, 2005. The Notice states that the dissolution of the applicant’s marriage was registered in the Register of Marriages and Divorces in accordance with the provisions of the Customary Marriage and Divorce Law on May 31, 2005. The Notice reflects that the applicant’s marriage to [REDACTED] was dissolved on February 10, 2003 in Kumasi-Ghana. The foregoing documentation does not state or imply that the applicant’s marriage to [REDACTED] was invalid. On the contrary, it states that the applicant and [REDACTED] had a marriage in accordance with the Ghanaian Customary Marriage Laws and Usages.

Counsel asserted in a brief filed with the waiver application that the applicant’s statement at her K-1 (fiancée visa) interview that she was never married is not a material misrepresentation because at the time of her interview, whether she was single and never married or single because she legally divorced her first husband results in the same outcome: a fiancée with the legal capacity to marry within 90 days of entering.

According to the U.S. Department of State’s Foreign Affairs Manual, “materiality does not rest on the simple moral premise that the alien has lied, but must be measured pragmatically in the context of individual cases as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien’s application for a visa.” 9 FAM 40.63 N6.1. The Board of Immigration Appeals (BIA) articulated the test for materiality in *Matter of S- and B-C-* as “(1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in a proper determination that he be excluded. This test is generally consistent with the prevailing judicial authorities, cited above.” 9 I&N Dec. 436, 447 (BIA 1960).

The AAO, in its de novo review of the record, finds that the applicant has made material misrepresentations in order to procure an immigrant visa for admission to the United States.³ The

³ The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also*, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

record reflects that [REDACTED] was selected for the 2004 Diversity Visa (DV-2004) program. The application period for DV-2004 lottery was between October and November 2002. The selected DV-2004 applicants were notified by mail between May and July of 2003.⁴ Therefore, [REDACTED] was selected through the DV-2004 lottery after his February 10, 2003 divorce from the applicant. However, on January 20, 2004, the applicant and [REDACTED] filed their immigrant visa applications, bearing their respective signatures, as residing together in a marital relationship. Accordingly, the record supports the director's finding that the applicant misrepresented material facts to procure admission into the United States. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for this reason.⁵

A section 212(i) waiver of the bar to admission resulting from violation of section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship the alien herself experiences upon deportation is irrelevant to section 212(i) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's husband. 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).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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).

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

⁴ See http://travel.state.gov/visa/immigrants/types/types_1322.html

⁵ Because the AAO has found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act, it is unnecessary to address whether she made material misrepresentations during her fiancée visa interview. Therefore, the AAO will decline to address this issue in the instant decision.

The record contains a statement from the applicant's spouse, dated July 2, 2008. The applicant's spouse asserts that he is in the U.S. Navy serving aboard the USS WASP, as a flight deck aviation handler. He states that his continued separation from the applicant has affected his attitude, mental health, and general well-being, as well as his job performance. He states that he has been continually depressed, suffering under the burden of extreme mental anguish. He states that his mental state is dangerous because his job requires so much focus.

As corroborating evidence, the applicant's spouse furnished letters from [REDACTED] U.S. Navy; [REDACTED] Air Officer, USS WASP; and [REDACTED] USS WASP. The letter from [REDACTED] dated June 27, 2008, states that the applicant's spouse is suffering severe hardship as a result of his separation from the applicant. He states that the hardship is making it difficult for the applicant's spouse to focus on his duties. He states that this can have adverse influence on the applicant's spouse's job performance, which may affect his career potential, eligibility for security clearances, and the safety of himself to his shipmates. He states that he dreads the mental anguish the separation will cause the applicant's spouse if the applicant's visa is not approved and they must suffer their separation indefinitely. The letter from [REDACTED] dated June 27, 2008, states that the applicant's spouse is a top performer who loses focus as he deals with the stress of not being able to share his life with the applicant. He states that the hazardous environment of flight deck operations requires undivided attention and his loss of focus not only endangers his life, but those that work with him. The letter from [REDACTED] dated May 7, 2007, states that the applicant's spouse's prolonged separation from the applicant in a time of war with all the rigors and demands of Navy life has been a source of high stress and extreme anguish. He states that the applicant's spouse does not have the normal support and nurturing involvement of the applicant due to their physical separation. He states that he believes allowing the applicant to be at her spouse's side and in their home to assist in their family affairs will be of tremendous benefit to the applicant's spouse's morale, welfare, well-being and the good of the Navy.

These letters indicate that the applicant's spouse is unable to perform his duties as a flight deck aviation handler with the U.S. Navy because of his separation from the applicant. However, there is no evidence in the record that indicates any steps are being taken to relieve the applicant of his stress while he deals with the pain of his emotional separation from the applicant. There is no indication that the applicant's spouse has sought and received treatment from a mental health professional. Nor is there any indication that he has requested leave or reassignment from his duties. The AAO recognizes that the applicant's spouse is suffering emotionally as a result of his separation from the applicant. His situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record.

While, in common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996)

(holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship).

The applicant's spouse asserts that he finds his career in the U.S. Navy to be extremely rewarding and he knows that it would be impossible for him to find any comparable work if he were to return to Ghana. He states that he would be giving up the very life he has built in the United States in anticipation of having the applicant come to the U.S. to share it with him.

The AAO recognizes that the applicant's spouse may have to alter his career path should he chose to relocate to his native country, Ghana. However, his inability to fulfill his career aspirations or a reduction in his standard of living does not necessarily result in extreme hardship. U.S. courts have held that demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship); *Shoostary v. INS*, 39 F.3d 1049 (9th Cir. 1994) ("the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances.").

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's spouse, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under sections 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 establishing that the application merits approval 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.