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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: ACCRA, GHANA Date: DEC 04 2008

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the  
Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)

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 or reopen, 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 Field Office Director, Accra, Ghana and the matter 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 pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking admission within ten years of his last departure from the United States. The applicant is the son of a U.S. citizen mother and the father of a U.S. citizen child. He seeks a waiver of inadmissibility in order to reside in the United States with his family.

The field office director found that the record failed to establish that the applicant's mother, [REDACTED] would suffer extreme hardship if his waiver request were to be denied. *Decision of the Field Office Director*, dated May 30, 2008.

On appeal, the applicant, through counsel, submits a brief; statements from medical personnel treating [REDACTED]; informational materials on diabetes, hypertension and lumbar spinal stenosis; statements from medical personnel regarding the applicant's health; informational materials on sickle cell anemia; affidavits sworn by [REDACTED] and the applicant's siblings; a City of New York birth certificate for the applicant's child; and a statement from the mother of the applicant's child. The applicant contends that he has submitted sufficient evidence to establish that the medical, psychological, emotional and financial hardship suffered by [REDACTED] would constitute extreme hardship and that the field office director's decision should be reversed. *Form I-290B, Notice of Appeal or Motion*, dated June 23, 2008.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver. - The Attorney General [now the Secretary of Homeland Security (Secretary)] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such

immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

The field office director based his finding of inadmissibility under section 212(a)(9)(B)(i) of the Act on the applicant's accrual of unlawful presence from June 2001, when he entered the United States without inspection or the use of fraudulent documents, until October 2007, when he returned to Ghana for his immigrant visa interview.

The record indicates that at the time of his consular interview in Accra on November 26, 2007, the applicant testified that he had entered the United States in 2001 at the age of 15<sup>1</sup> as the child of an aunt who was a diversity visa beneficiary. The applicant remained in the United States with his family until he departed for his immigrant visa interview in 2007. Although the applicant entered the United States with a fraudulent document in 2001, he did not begin to accrue unlawful presence until September 30, 2003, his 18<sup>th</sup> birthday, as no period of time in which an individual is under 18 years of age may be used in determining unlawful presence. *See* section 212(a)(9)(B)(iii)(I) of the Act. Therefore, the applicant accrued unlawful presence from September 30, 2003 until he departed the United States in 2007. As he was unlawfully present in the United States for more than one year and is seeking admission to the United States within ten years of his 2007 departure, he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

The AAO also finds that, based on the applicant's testimony to the Department of State consular officer, he is inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for having entered the United States through fraud or the willful misrepresentation of a material fact. Although the applicant was under 18 years of age when he entered the United States, the provisions of section 212(a)(6)(C)(i) of the Act, unlike those of section 212(a)(9)(B), offer no exception for minors.

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

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<sup>1</sup> The AAO notes that the record contains a Ghanaian birth certificate for the applicant which states his date of birth as September 30, 1985. Although the Form I-130, Petition for Alien Relative, and DS-230, Application for Immigrant Visa and Alien Registration, list the applicant's date of birth as September 30, 1983, the AAO will rely on the primary evidence of the applicant's birth date, his government-issued birth certificate.

alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The AAO notes that waivers of the bars to admission in sections 212(a)(6)(C) or 212(a)(9)(B)(i)(II) of the Act are first dependent upon a showing that the bars impose an extreme hardship on a qualifying family member, i.e., the U.S. citizen or lawful permanent resident spouse or parent of the applicant. Hardship an applicant experiences or that is felt by other family members as a result of the applicant's inadmissibility is not considered in waiver proceedings under sections 212(a)(9)(B)(v) or 212(i) of the Act, except as it would affect an applicant's qualifying relative. In the present case, the only qualifying relative is ██████████ the applicant's mother. Should the record in the present case establish that Ms. ██████████ would experience extreme hardship, it will be but one favorable factor to be considered in the determination of whether the Secretary's discretion 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 alien 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. The BIA has held:

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)].

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 mother must be established whether she relocates to Ghana or remains 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 AAO will now consider the relevant factors in the adjudication of this case.

The first part of the extreme hardship analysis requires the applicant to establish extreme hardship to [REDACTED] in the event that she relocates to Ghana. However, the record on appeal does not address the impacts of relocating to Ghana on [REDACTED]. Accordingly, the AAO is unable to find that she would suffer extreme hardship if she joined the applicant in Ghana.

The second part of the analysis requires the applicant to prove that [REDACTED] would suffer extreme hardship if she remains in the United States without the applicant.

On appeal, counsel notes that the applicant's common-law spouse, his U.S. citizen child, and three sisters, two of whom are U.S. citizens and the third a lawful permanent resident, all reside in the Bronx. He asserts that [REDACTED]'s medical conditions have been seriously aggravated by the knowledge that the applicant is separated from his family. Counsel contends that, as a result of her concerns, [REDACTED]'s blood pressure has fluctuated greatly, worsening her hypertension and that she, already asthmatic, has experienced tightness in her chest, shortness in her breathing and wheezing. He also asserts that she has experienced several periods of dizziness and light-headedness, sleep deprivation, frequent panic attacks and has been extremely depressed. Adding to [REDACTED]'s concerns, counsel states, is the fact that the applicant suffers from sickle cell anemia and she fears that the Ghanaian medical system is unable to provide him with the proper medical care. Counsel states that, after the applicant's immigrant visa application was denied, the applicant contacted [REDACTED] for financial assistance, as well as her help in obtaining medication from the United States.

Counsel also asserts that the applicant was the sole financial provider for his common-law spouse and his child and that, in his absence, this responsibility has fallen on [REDACTED] which further aggravates her medical conditions.

In support of counsel's claims regarding [REDACTED]'s health, the record includes a June 25, 2008 letter from [REDACTED]'s physician, [REDACTED], who states that [REDACTED] is being treated for diabetes mellitus, hypertension, lumbar stenosis and asthma, and that her health has been greatly affected by the applicant's immigration situation. [REDACTED] indicates that [REDACTED] is finding it difficult to work, is extremely stressed, depressed and anxious, and that, as a result, her hypertension and diabetes are uncontrolled. A second letter, dated June 24, 2008, from the Asthma Center at the Jacobi Medical Center, indicates that [REDACTED]'s asthma has worsened as a result of the stress that has followed the denial of the applicant's visa application and that, as previously stated by counsel, she is experiencing chest tightness, shortness of breath and wheezing. Included in the record are medical discussions of diabetes, hypertension, lumbar spinal stenosis and asthma.

To establish his own medical condition, the applicant has provided letters, both dated June 25, 2008, from [REDACTED] and [REDACTED] of the Jacobi Medical Center, which state that he suffers from sickle cell anemia and was last treated for this disease in October 2007. The record is supplemented with printed materials on sickle cell anemia.

In her affidavit, ██████ states that she is providing the applicant's common-law spouse and her grandson with funds for food, clothing and other necessities and that it "breaks her heart" to see her grandson in this situation. She also notes her concerns about the medical care that the applicant is receiving in Ghana, indicating that she does not know of any good doctors who specialize in diseases of the blood and that she fears for his life. ██████ indicates that her own physical and mental health has been negatively affected by her separation from the applicant and asserts that, when she learned that the applicant could not return to the United States, she suffered a nervous breakdown. She states that when her son lived in the United States, she felt a sense of security, but now feels weak and vulnerable.

Also included in the record is a July 17, 2008 affidavit, sworn by the applicant's three sisters, which refers to the stress and anxiety felt by ██████ and concludes that her separation from the applicant is "killing her." An undated letter from the applicant's common-law spouse reports that she needs him to return to the United States so that he can support her and his son financially, physically, mentally and emotionally.

While the record does not support counsel's and ██████ claims that she must now shoulder the financial burden of supporting the applicant's common-law wife and her grandson, it does reflect that ██████ suffers from multiple medical conditions that have been exacerbated by her separation from the applicant. Further, although the fact that the applicant suffers from sickle cell anemia is not directly relevant to a determination of extreme hardship in the present matter, the AAO acknowledges that Ms. ██████ concerns regarding her son's health in Ghana have contributed to the stress and anxiety that have aggravated her own medical problems. Based on the medical documentation in the record, the AAO finds the applicant to have established that ██████ would suffer extreme hardship if she remains in the United States without the applicant.

While the hardships discussed in the record demonstrate that ██████ would suffer extreme hardship if she were to continue to be separated from the applicant, they do not, as previously discussed, support a finding that she would face extreme hardship upon relocation to Ghana. Therefore, the applicant has failed to establish statutory eligibility for a waiver under sections 212(a)(9)(B)(v) and 212(i) of the Act. As the applicant is statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion. Accordingly, the appeal will be dismissed.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B) 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.

**ORDER:** The appeal is dismissed.