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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

U.S. Citizenship and Immigration Services

[redacted]

H5

FILE: [redacted] Office: NEWARK, NJ Date: APR 02 2010

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 PETITIONER:

[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 Field Office Director, Newark, New Jersey, 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 has resided in the United States since December 10, 2003, when he was admitted as a visitor for pleasure. The applicant was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having sought to procure admission to the United States by fraud or willful misrepresentation of a material fact. The applicant is the spouse of a U.S. citizen and the beneficiary of an approved Petition for Alien Relative. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), so that he may remain in the United States with his wife.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the Field Office Director* dated October 24, 2007.

On appeal, counsel for the applicant asserts that U.S. Citizenship and Immigration Services (USCIS) improperly interpreted evidence presented with the waiver application and misapplied case and statutory law in denying the waiver application. *See Brief in Support of Appeal* at 4. Specifically, counsel states that the applicant's wife would experience emotional hardship if she relocated to Ghana or remained in the United States without the applicant, and her hardship would be compounded by hardship experienced by her son if the applicant were removed. *Brief* at 4-5. Counsel further asserts that USCIS erred in dismissing the findings of a psychologist who evaluated the applicant's wife and claims that she suffers from a serious psychological disorder that would result in extreme hardship if the waiver application were denied. *Brief* at 5. Counsel further maintains that the applicant's wife would suffer extreme hardship if she relocated to Ghana with the applicant because she would be separated from family members in the United States and would suffer from poor economic conditions, human rights violations, and lack of access to adequate medical care in Ghana. *Brief* at 5- 6. In support of the waiver application and appeal, counsel submitted an affidavit from the applicant's wife, a psychological evaluation of the applicant's wife, information on conditions in Ghana, and letters from friends and relatives of the applicant in support of the waiver application. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

> (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:

> (1) The [Secretary] may, in the discretion of the [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 [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 AAO notes that the record contains several references to the hardship that the applicant's stepson would suffer if the applicant were removed from the United States. Section 212(i) of the Act provides that a waiver of section 212(a)(6)(C)(i) of the Act is applicable solely where the applicant establishes extreme hardship to his or her citizen or lawfully resident spouse or parent. It is noted that Congress did not include hardship to an alien's child as a factor to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative, and hardship to the applicant's child will not be separately considered, except as it may affect the applicant's spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally 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, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court 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. In *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang,* 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that the applicant is a thirty-seven year-old native and citizen of Ghana who has resided in the United States since December 10, 2003, when he entered the country as a visitor for

pleasure. He previously sought to enter the United States as a permanent resident with a fraudulent Ghanaian passport and ADIT stamp under the name [redacted]. He was placed in expedited removal proceedings and removed to Ghana on February 25, 1999. The applicant's wife is a thirty year-old native and citizen of the United States whom the applicant married on December 29, 2004. The applicant and his wife reside in Lakewood, New Jersey with their son.

Counsel asserts that the applicant's wife would suffer extreme hardship if she relocated to Ghana because she would have to separate her son from his biological father, with whom he has a close relationship, and would be separated from her family members, including her brother who has leukemia and her father who suffers from multiple medical problems. *Brief* at 2, 5-6. Counsel further assets that the applicant's wife has never been to Ghana and has no ties there and would suffer because of poor economic conditions, societal discrimination against women, and lack of adequate medical care *Brief* at 2-3, 6. The AAO notes that no evidence of the applicant's wife's family ties to the United States or her relatives' medical conditions was submitted. 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)). Nevertheless, documentation on the record indicates that in Ghana societal discrimination against women is a problem, the minimum wage did not provide a decent standard of living for workers and their families, 31.4% of the population lives below the poverty line and the unemployment rate is about 20%. In light of the fact that the applicant's wife was born in the United States and has no ties to Ghana, the applicant has established that she would suffer extreme hardship in Ghana as a result of severing her ties to the Untied States and having to adjust to the culture, language, and economic conditions there.

Counsel for the applicant states that the applicant's wife would experience extreme emotional and psychological hardship if she were separated from the applicant, and in support of this assertion submitted an affidavit from the applicant's wife and a psychological evaluation conducted by [redacted], a psychologist who interviewed the applicant's wife on February 4, 2006. [redacted] states that the applicant's wife was distraught over the possibility that the applicant might have to leave the United States and concludes that she suffers from "Adjustment Disorder with Mixed Anxiety and Depressed Mood" as a result of the fear that she will be separated from him. *Affidavit of* [redacted], dated February 6, 2006. [redacted] further states that if she were separated from the applicant, the applicant's wife's symptoms, which include sleep disturbance, poor appetite, and crying spells, "will become seriously exacerbated." *Affidavit of* [redacted]. Although the input of any mental health professional is respected and valuable, the AAO notes that the report from [redacted] is based on a single interview rather than an ongoing relationship between a mental health professional and the applicant's wife. Further, the report does not indicate that [redacted] or any other mental health professional provided any treatment for the applicant's spouse, despite the diagnosis of anxiety and depression. The conclusions reached in the submitted evaluation, being based on a single interview, do not reflect the insight and elaboration resulting from an established relationship with a psychologist. This renders the psychologist's findings speculative and diminishes the evaluation's value to a determination of extreme hardship.

The applicant's wife states that she loves the applicant dearly and does not know what she would do if she lost him. *Affidavit of* [redacted] dated March 2, 2006. The evidence on the record does not

establish, however, that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's removal or exclusion. Although the depth of her distress over the prospect of being separated from her husband is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But 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 emotional and financial hardship the applicant's wife would experience if she remained in the United States without the applicant appears to be the type of hardship that a family member would normally suffer as a result of deportation or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991); *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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 extreme hardship to his U.S. citizen spouse as required under section 212(i) of the Act.

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. 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.