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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

HS

FILE:

Office: NEW YORK, NY

Date:

MAR 19 2010

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 or reopen, 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 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 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), for attempting to procure admission to the United States by fraud or willful misrepresentation. The applicant's spouse and five children are U.S. citizens. She seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, at 5-6, dated January 22, 2009.

On appeal, counsel asserts that director incorrectly assessed the gravity of the hardship that the applicant's spouse will face if the applicant is removed as the facts demonstrate that the applicant's spouse will suffer severe psychological, emotional and physical trauma if the applicant is torn from his side. *Form I-290B*, at 2, received February 23, 2009.

The record includes, but is not limited to, counsel's two briefs and two psychological evaluations of the applicant's spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

Counsel asserts that the applicant did not commit a material misrepresentation when entering the United States; she acquired a photo-substituted passport and Form I-551 under an assumed name in order to flee Ghana, where she feared persecution; she used the documents to flee Ghana but did not utilize them to gain entry into the United States; the flight crew collected the applicant's and others' passports while traveling to the United States and since the crew gave the immigration officers the documents, the applicant never handed the immigration officer any identity documents; she stated her true name and country of origin to the first border control agent with whom she spoke; her immediate disclosure of her identity is supported by her I-94 document; the written report by the immigration officer indicates that the applicant never misrepresented her identity or country of origin; the officer does not allege that the applicant stated that she was the individual in the altered documents; the officer wrote that the applicant claims to be a citizen of Ghana and presented a New Patriotic Membership card with her true name; and in her sworn statement before the immigration officer, the applicant gave correct information for her name and country of birth. *Brief in Support of Appeal*, at 1-3, dated February 20, 2009.

A "Memo to File" drafted by the immigration inspector and dated March 2, 1994 reflects that the applicant presented a photo-substituted Mali passport with an altered year of birth. The officer further stated that the applicant appeared to be excludable under section 212(a)(6)(C)(i) of the Act. The word "presented" suggests that the applicant offered the passport to the inspecting officer in an attempt to gain admission to the United States, and the inspecting officer did not indicate that the applicant revealed her true identity at the first opportunity or prior to being discovered as an

“imposter.” The AAO notes that the record includes the applicant’s Form I-94 with her correct name and country of citizenship. However, the I-94 indicates that the applicant was to appear at an exclusion hearing and it is not clear whether this form was completed after the discovery of the fraudulent documents or whether it was presented to the inspecting officer initially. The AAO acknowledges that the account given by counsel is not implausible, but finds that, on balance, the evidence in the record supports the determination that the applicant is inadmissible under section 212(a)(6)(C)(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)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member, in this matter, the applicant’s spouse. Hardship to the applicant or her children is not a permissible consideration in a 212(i) waiver proceeding except to the extent that such hardship affects the qualifying relative, in this case the applicant’s spouse. 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 lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to a qualifying relative must be established whether the qualifying relative resides in Ghana or in the United States, as the qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The first part of the analysis requires the applicant to establish extreme hardship to a qualifying relative in the event that the qualifying relative resides in Ghana. Counsel states that the applicant's spouse suffers from posttraumatic stress disorders and has begun to develop glaucoma, which can lead to blindness; his medical conditions would not be properly treated in Ghana; the applicant suffers from hypertension, arthritis, diabetes and asthma, and she would be unable to receive proper treatment in Ghana; and the applicant and her spouse would likely be in severe poverty as almost half of the country lives on less than one dollar a day, the average annual income is \$520, and they could not pay for their medical expenses and their children's educational and living expenses at this level of earning. *Counsel's Emergency Brief*, at 5-6, undated. The AAO notes that without documentary evidence to support these claims, the assertions of counsel will not satisfy the applicant's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 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).

The applicant's family was evaluated by a [REDACTED], who states that the applicant's spouse's parents are deceased and he believes that if his parents had relocated to the United States, they would still be alive; he is frightened that the applicant's life would be in danger due to her multiple, serious chronic medical issues; almost all of his siblings have abandoned Ghana due to the extreme hardships there; he suffered from posttraumatic stress disorder due to violence he experienced in the military and thinking about returning to Ghana brings back very negative associations of his life there; he suffers from a problem in the eye which could lead to glaucoma absent proper care and has extensive problems with his teeth for which he has had multiple interventions; and the applicant and her spouse would face possible poverty, a dangerous environment, healthcare and social service delivery scarcity and other terrible deficits. *Psychological Evaluation*, [REDACTED] at 4-6, 22 at 4-6, 22, dated June 5, 2008. The record does not include documentary evidence of the applicant's medical problems, a clinical diagnosis of posttraumatic stress disorder, the applicant's spouse's military service and the violence that he experienced, the applicant's spouse's medical problems, or of the claimed country conditions in Ghana. The record is not clear as to whether the applicant's spouse would experience the psychological and emotional symptoms discussed in the second part of the analysis if he relocated to Ghana. The AAO finds that record includes insufficient evidence to establish that the applicant's spouse would experience extreme hardship upon relocating to Ghana.

The second part of the analysis requires the applicant to establish extreme hardship in the event that a qualifying relative remains in the United States. Counsel states that the applicant's spouse has lost considerable weight, and experiences bouts of anxiety and dizziness, inability to eat and persistent insomnia; he works as a client care worker in a homeless shelter, an incredibly taxing job; he relies

on the applicant for emotional support; the applicant and her spouse have five U.S. citizen children who rely on their care and support; it would be almost impossible for the applicant's spouse to care for himself and work to help pay for the college tuition of their children; the applicant is the rock of the family and disrupting the family would likely propel the applicant's spouse into a deep, debilitating depression, preventing him from contributing to the family, and risking his committing suicide; and their children would likely have to stop their pursuit of higher education. *Counsel's Emergency Brief*, at 5-6.

states that the applicant's spouse reports poor sleep due to nightmares in which his family is forced to leave their home, he is anxious and restless waiting for an answer from immigration, and his presentation is consistent with "Adjustment Disorder with Mixed Anxiety and Depressed Mood [and] Psychosocial Issues: immigration case and children's health and safety." *Psychological Evaluation*, at 7. The psychologist details the strong bond, common values and love between the applicant and her spouse, the dependence of the applicant's spouse on the applicant, and the difficulties and hardships that the applicant's spouse and five children will experience without her. *Id.* at 7-19. He states that the applicant is essential due to the many issues that her spouse must contend with; states that the applicant suffers from hypertension, arthritis, diabetes, asthma and anemia; states that the applicant immigrated to the United States to escape threats against her life and that of her children in Ghana; and states that the applicant's family fears that the applicant would die without proper health care in Ghana. *Id.*

The applicant's spouse was seen by another psychologist, who states that the applicant's spouse presented with depressed mood, anxiety, fears, dizziness, not feeling like living, loss of appetite, excessive crying, feelings of helplessness; his psychiatric history indicates that he had depression in his childhood due to separation from his biological mother and mistreatment at the hands of his father; he has been depressed since he learned of the applicant's deportation order; he reported insomnia, poor appetite and significant weight loss in the last few months; his current symptoms and psychiatric history meet the diagnostic criteria of Major Depressive Disorder, Recurrent, Severe Without Psychotic Features and Anxiety Disorder; he needs to be monitored for suicidal risk, he needs to be actively engaged in recommended treatment and he needs family support; his wife plays an irreplaceable role in his emotional well-being; he became depressed after his mother left him and was frequently beaten as a child for mistakes and little things; he has frequent stomach aches and may develop glaucoma if he does not follow up with treatment. *Psychological Evaluation*, at 1-2, 5, 7 (January 22, 2009).

Based on the hardship factors presented, the AAO finds that the applicant's spouse would experience extreme hardship upon remaining in the United States, but the applicant has failed to demonstrate that her spouse would experience extreme hardship if he relocated to Ghana.

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.