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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] (relates) Office: PHILADELPHIA, PA Date: MAR 25 2010

IN RE: Applicant: [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 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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO notes that on appeal, the applicant, through counsel, requested 60 days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed April 4, 2006. As of this date, the record contains no evidence that a brief or additional evidence has been filed and the record is considered complete.

The record reflects that 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 having entered the United States by fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a naturalized United States citizen and the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his spouse.

The Acting District Director found 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 Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated March 3, 2006.

On appeal, the applicant, through counsel, asserts that the Acting District Director "failed to properly evaluate all the evidence that warranted the grant of an I-601 waiver," "failed to fully evaluate the evidence in a cumulative fashion," and "failed to give a proper foundation for her decision." *Form I-290B, supra.*

The record includes, but is not limited to, affidavits from the applicant and his wife; a letter of support for the applicant and his wife; receipts from the Women's Institute; health insurance statements; mortgage and lease documents, wage and tax documents, bank statements, and telephone and utility bills; and country condition reports on Ghana. 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, that:

> (i) In general.-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.
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> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

> (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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...

In the present case, the record indicates that on September 16, 1995, the applicant entered the United States by presenting a fraudulent Liberian passport. On April 27, 2001, the applicant's naturalized United States citizen wife filed a Form I-130 on behalf of the applicant. On November 26, 2001, the applicant's Form I-130 was approved. On May 30, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On June 9, 2005, the applicant filed a Form I-601. On March 3, 2006, the Acting District Director denied the applicant's Form I-485 and Form I-601, finding the applicant had entered the United States through fraud or misrepresentation and had failed to demonstrate extreme hardship to a qualifying relative.

Based on the applicant's use of a fraudulent Liberian passport to enter the United States, the AAO finds that the applicant willfully misrepresented a material fact in order to obtain a benefit under the Act and is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that the applicant does not dispute this finding.

A section 212(i) 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 to the citizen or lawfully resident spouse or parent of the applicant. Hardship the applicant himself experiences upon removal is irrelevant to a section 212(i) waiver proceeding. 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 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 *Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) 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. The BIA has also 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. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes, however, that the courts have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). The common results of deportation are insufficient to prove extreme hardship as extreme hardship has generally been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *see also 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). Only "in cases of great actual or prospective injury...will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984).

Extreme hardship to a qualifying relative must be established whether he or she relocates with the applicant or remains in the United States as a qualifying relative is not required to leave the United States as a result of the denial of the applicant's waiver request.

The applicant's wife states that her family is in the United States and that, if she joins the applicant in Ghana, she "would be effectively alone with him there." The applicant's wife also states that the applicant works hard to help pay their financial obligations, and, in Ghana, there is "very little opportunity for [the applicant], either in employment or education; opportunities for [her] as a woman would be substantially less." The applicant's wife states that she and the applicant want to raise a family and that their "dreams of having a family would probably never be realized in Ghana, as the health risks associated with birth and childrearing in Ghana are numerous" and would "potentially put [her] at risk." She indicates that she and the applicant have consulted with and taken instruction from a fertility specialist in order to increase their chances of having a child.

The AAO acknowledges the claims made by the applicant's spouse regarding the difficulties she would face in relocating to Ghana. It notes that she, a native of the Virgin Islands and a citizen of the United States, may experience hardship in moving to a country with which she has no previous ties. However, it does not find the record to establish that relocating to Ghana would result in extreme hardship for her. The AAO notes that the record fails to document, e.g., an evaluation by a mental health practitioner or other medical evidence, that the applicant's wife would experience extreme emotional hardship if she joined the applicant in Ghana. Additionally, the AAO notes that the record fails to indicate that the applicant's wife has a medical condition, physical or mental, that would preclude her from going to Ghana.

The AAO agrees that opportunities for women in Ghana may be not be as available as in the United States, but it also finds that the country conditions materials in the record indicate that the government has made progress with educating and training women. *See Ghana NGO Alternative Report for Beijing + 10*, August 2004. As stated in the Women, Law and Development in Africa report submitted by the applicant, "[w]omen in Ghana are recognized under law as having equal rights with men in all spheres of life." Additionally, "[a]t all historical junctures, women in Ghana have contributed immensely towards Ghana's political life...." While the report states that women in Ghana "continue to suffer bias and discrimination," it also indicates that "[i]n relation to women, laws have been passed over the years to improve their situation." Further, the AAO does not find the submitted country conditions materials to establish that the applicant and his wife would be unable to obtain employment in Ghana. The record does not establish that the applicant's wife has no transferable skills that would aid her in obtaining a job in Ghana. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See 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)).

The record also fails to document that the applicant and his wife would be unable to consult a fertility specialist in Ghana or receive fertility treatment there. The Women, Law and Development in Africa report indicates that, in Ghana, "women are at high risk of dying from pregnancy related causes." The report also states, however, that "maternal mortality is preventable with certain low cost interventions." The AAO notes that the applicant has not established that he and his wife could not afford these low cost interventions to ensure her health in the event that she were to become pregnant. Additionally, the country conditions materials submitted by the applicant indicate that free family planning services are widely available in Ghana. *See Ghana NGO Alternative Report for Beijing + 10, supra.* Therefore, based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Ghana.

The record further does not establish extreme hardship to the applicant's wife if she remains in the United States, maintaining her employment. In an affidavit dated March 25, 2005, the applicant's wife states the applicant is her "spiritual partner" and "[him] being taken away from [her] would cause a void in her spiritual and emotional life." The applicant's wife further states that if she stayed in the United States without the applicant, it "would cause [her] social, spiritual, financial, economic and conjugal difficulties" and that it would be "impossible to be able to pay rent and utilities on [her] modest salary.... [The applicant] is without question a solid financial partner in [their] marriage." The applicant states

"there would be very little opportunity for [him] to provide for [his] family" if he were removed to Ghana.

The AAO finds the record to include some documentation of the applicant's and his wife's expenses. However, this material offers insufficient proof that the applicant's wife would be unable to support herself in the applicant's absence. Further, as previously discussed, the record does not contain documentary evidence that demonstrates the applicant would be unable to obtain employment in Ghana and, thereby, financially assist his wife from outside the United States. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *Matter of Soffici, supra.* Accordingly, the AAO does not find the record to demonstrate that the applicant's wife would experience extreme hardship if the applicant were to be excluded and she remained in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife 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 he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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.