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



U.S. Citizenship and Immigration Services

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FILE: [Redacted] Office: PROVIDENCE Date: **MAY 11 2010**

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 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 Field Office Director, Providence, Rhode Island, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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), for seeking admission into the United States by fraud or willful misrepresentation. The applicant is the spouse of a naturalized citizen of the United States. She sought 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 her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director, dated August 8, 2007.* The applicant submitted a timely appeal.

On appeal, counsel asserts that if the applicant is removed from the United States the combined hardship factors demonstrate extreme hardship to the applicant's spouse, and by extension, to her two children, who were born on August 15, 2002 and December 10, 2004. Counsel contends that the applicant's husband has lived in the United States since he was sixteen years old. Counsel maintains that the applicant's husband will be unable to work and take care of his children if he remained in the United States without his wife. He states that the applicant's husband does not have the financial means to pay for someone to take care of his children. Counsel declares that country conditions in Ghana are terrible, and that life expectancy is 55 years for men and 49 years for women. He states that the applicant and her family will have a high risk of contracting yellow fever, typhoid fever, malaria, AIDS, and schistomaisis. Counsel states that public education is not free in Ghana and desks and books are in short supply. Counsel claims that the applicant's husband states that he will be unable to find work as a radiologic technician in Ghana because the economy is primarily based on agriculture. Counsel states that the applicant's husband earns \$40,000 annually and that he and the applicant own a three-bedroom house. Counsel states that the applicant's children never visited Ghana, her daughter may be forced to undergo female genital mutilation, and Ghana lacks pediatric care and has diseases that effect children.

The AAO will first address the finding of inadmissibility. 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.

The record reflects that the applicant admits that she gained admission into the United States on September 6, 2001, by presenting a photo-switched passport bearing the name [REDACTED]. Based on her admission and the documentation in the record, we find the applicant is inadmissible under section 212(a)(6)(C) of the Act for having willfully misrepresented the material fact of her true identity and her eligibility for admission into the United States.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states 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.

The waiver under section 212(i) of the Act requires the applicant show that the bar to admission imposes an extreme hardship to the citizen or lawfully resident spouse or parent of the applicant. Hardship to an applicant is not a consideration under the statute, and unlike section 212(h) of the Act where a child is included as a qualifying relative, children are not included under section 212(i) of the Act. Hardship to the applicant and to her children will be considered only to the extent that it results in hardship to a qualifying relative, who in this case is the applicant's naturalized citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in determining whether the Secretary should exercise discretion. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

"Extreme hardship" is not a definable term of "fixed and inflexible meaning"; establishing extreme hardship is "dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). The Board of Immigration Appeals (BIA) in *Matter of Cervantes-Gonzalez* lists the factors it considers relevant in determining whether an applicant has established extreme hardship a qualifying relative pursuant to section 212(i) of the Act. 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. *Id.* at 565-566.

In *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994).

In rendering this decision, the AAO will consider all of the evidence in the record.

Extreme hardship to the applicant's qualifying relative must be established in the event that he remains in the United States without the applicant, and alternatively, if he joins the applicant to live

in Ghana. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

Family separation must be considered in determining hardship. *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) ("the most important single hardship factor may be the separation of the alien from family living in the United States"). However, courts have found that family separation does not conclusively establish extreme hardship. In *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). *Perez v. INS*, 96 F.3d 390, 392 (9th Cir. 1996), states that "[e]xtreme hardship" is hardship that is "unusual or beyond that which would normally be expected" upon removal and "[t]he common results of deportation or exclusion are insufficient to prove extreme hardship." (citing *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir.1991).

With regard to remaining in the United States without the applicant, the undated statement by the applicant's husband conveys that his wife takes care of their children while he works as a radiologic technician. He states that he earns just under \$40,000 annually, and nets \$2,500 every month. He claims that their mortgage is \$1,600, their monthly expenses total \$1,200, and that it will not be affordable to have someone take care of his children while he is working. However, the AAO notes that the submitted income tax record for 2006 reflects \$80,487 in income, and the record does not contain the W-2 Form(s) that comprise this income. However, the tax records for 2005 show the applicant's husband earned \$71,581, while the applicant earned \$1,589. In view of the income tax records, we find that the applicant has not fully demonstrated that her husband's income is not enough to pay his household and childcare expenses. While the AAO acknowledges that the applicant's husband will experience emotional hardship on account of separation from his wife, we find that the applicant had not fully demonstrated that the hardship that her husband will experience as a result of separation will be "unusual or beyond that which would normally be expected" upon her removal.

The hardship factors asserted in this case are financial, in that the applicant's husband will not be able to pay for his household expenses and childcare, and the emotional hardship of family separation. The income tax records suggest that the income of the applicant's husband is adequate to pay for household and childcare expenses. While the AAO recognizes that the applicant's husband will experience emotional hardship as a result of separation from his wife, the applicant has not fully established that her husband's hardship will be "unusual or beyond that which would normally be expected" upon her removal. When the combination of hardship factors is considered in the aggregate, they fail to establish extreme hardship to the applicant's spouse if he remained in the United States without his wife.

In his statement, the applicant's husband contends that disease is widespread in Ghana and that medical insurance and pediatric and specialty care is unavailable. He indicates that female circumcision is still practiced in Ghana and he would not want this done to his daughter. The applicant's husband maintains that his parents live in a studio apartment and have no room or financial support to offer, and that he provides financial support to his parents. The applicant's husband expresses concern about the educational system in Ghana such that it lacks textbooks,

desks, and classrooms. He declares that he will be unable to obtain employment as a radiologic technician because of the economy in Ghana. The AAO notes that the Central Intelligence Agency's information about Ghana for 2005 indicates that 60 percent of the labor force is in the agricultural sector, 15 percent in the industrial sector, and 25 percent is in services. We note that the gross domestic product per capita in 2003 was \$2,200. Counsel declares that country conditions in Ghana are deplorable, and that the life expectancy at birth for men is 55 years and for women it is 49 years.

The hardship factors asserted in this case are the prevalence of disease, the lack of pediatric and specialty care, the lack of medical insurance, problems with the educational system, the practice of female circumcision, not being able to obtain employment as a radiologic technician, and having to leave the United States after having lived here since 1991. Even though the applicant's husband contends that disease is widespread in Ghana, and that medical insurance and pediatric and specialty care are unavailable, he has provided no documentation showing the unavailability of treatment for diseases, medical insurance, and pediatric and specialty care. Although the applicant's husband indicates that the practice of female circumcision occurs in Ghana, the record contains no documentation establishing its prevalence, or that it would be imposed on the applicant's daughter without the consent of the applicant or her husband. The applicant's husband asserts that his parents will be unable to assist them in Ghana and that he provides financial support to them. However, no documentation of his financial support to his parents has been submitted into the record. The concern of the applicant's husband about the educational system in Ghana (lack of textbooks, desks, and classrooms) is not supported by any independent documentation. The applicant's spouse contends that he will be unable to obtain employment as a radiologic technician because Ghana's economy is primarily agricultural. However, we find that given Ghana's population of 20 million people and the applicant and her husband's occupations in the United States (she is a certified nursing assistant and he is a radiologic technician), the applicant has not fully demonstrated that they will live in poverty on account of not finding employment in their respective fields or in other occupations for which they are qualified. Furthermore, we cannot fully determine the bearing of the life expectancy statistics on the applicant's husband in the absence of information demonstrating what their socio-economic standing will be in Ghana. Thus, the applicant has not established that the combination of hardship factors demonstrate that her husband will experience extreme hardship if he joined her to live in Ghana.

Based upon the record before the AAO, the applicant in this case fails to establish extreme hardship to a qualifying family member for purposes of relief under section 212(i) of the Act, 8 U.S.C. § 1182(i).

Because the applicant is statutorily ineligible for relief, no purpose is 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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.