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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



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FILE: [REDACTED] Office: ST. PAUL, MN

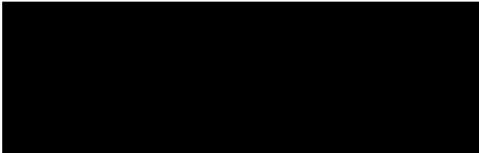
Date: OCT 18 2010

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)

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ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

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

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 obtained a benefit under the Act through fraud or the willful misrepresentation of a material fact. The record indicates that the applicant is married to a U.S. citizen and is the father of two U.S. citizens. He 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 family.

The District Director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship for his spouse or that he warranted a favorable exercise of discretion. The District Director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, dated September 11, 2009.

On appeal, counsel contends that the applicant's spouse will suffer extreme hardship if the applicant is removed from the United States. He also asserts that the District Director should have considered the impact of the applicant's inadmissibility on his U.S. citizen daughters as their hardship will affect their mother, who will be solely responsible for their emotional, physical and financial well-being. *Notice of Appeal or Motion*, dated October 9, 2009.

In support of the waiver application, the record includes, but is not limited to, counsel's brief, statements from the applicant, his spouse, his brother and cousin; country conditions material on Ghana; employment letters; tax returns, earnings statements and W-2 forms; and a psychological report and medical documentation relating to the applicant's spouse. The entire record was reviewed and considered in arriving at a decision in this matter.

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 used his brother's passport to obtain a nonimmigrant visa to the United States and then used the passport and visa to enter the United States on October 22, 1995. Therefore, the applicant obtained a benefit under the Act through fraud or the willful misrepresentation of a material fact and is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or his children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals (BIA) stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996).

Extreme hardship is “not a definable term of fixed and inflexible content or meaning,” but “necessarily depends upon the facts and circumstances peculiar to each case.” *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the BIA provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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.* The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The BIA has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one’s present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm’r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the BIA has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “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.” *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. See *Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. See *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The

question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the BIA considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) (“Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation.”). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent’s spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing “physical proximity to her family” in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The AAO now turns to the question of whether the applicant in the present case has established that his U.S. citizen spouse would experience extreme hardship as a result of his inadmissibility.

In a sworn statement, dated January 25, 2006, the applicant’s spouse asserts that if she and her children moved to Ghana, they would be at great risk from disease and that her children lack the immune systems to resist the diseases to which they would be exposed. She also states that her daughters would face poor educational options as it would be nearly impossible to afford the type of education available in the United States and that they might even be denied an education because of cultural norms. The applicant’s spouse contends that Ghana is an impoverished country, with weak employment opportunities and that living conditions are substantially below those in the

United States. She also states that she and her daughters would lose their family ties to the United States.

In support of his spouse's claims, the applicant submits statistics on Ghana from the CIA World Factbook, which show that life expectancy for a woman in Ghana is 60.75 years, the degree of risk for contracting an infectious disease is "very high," female literacy is 49.8 percent, and that the unemployment rate is 11 percent, with 28.5 percent of the population below the poverty line. Counsel asserts that these statistics, by themselves, establish that the applicant's spouse would face extreme and unusual hardship if she returned to Ghana with the applicant. He further states that if the applicant's spouse moves to Ghana, she will be without the medical and therapeutic services she now receives.

The AAO acknowledges the statistics published in the CIA World Factbook, but does not find them sufficient to establish what hardships the applicant's spouse would face if she returned to Ghana. They offer an overview of conditions in Ghana as a whole, but they do not predict the applicant's spouse's experience upon relocation. The AAO notes that the applicant's Form G-325A, Biographic Information, dated January 25, 2006, indicates that he resided in [REDACTED] prior to his admission to the United States. His spouse's Form G-325A, dated October 9, 2003, states that she was born in and resided in [REDACTED] prior to emigrating. The record, however, does not address health conditions, employment or education as they exist in [REDACTED] or how such conditions would affect the applicant's spouse upon return.

The record also fails to indicate that the applicant's spouse would sever all family ties by returning to Ghana. She indicates in a December 27, 2006 statement that her parents, having resided in the United States for more than 20 years, returned to Ghana in 2005.¹ Further, the record does not establish that the applicant's spouse would require medical and therapeutic services if she returned to Ghana. It documents that the applicant's spouse is seeing a psychologist as a result of her concerns regarding her potential separation from the applicant. It fails to demonstrate that relocation to Ghana would require her to seek mental health treatment. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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 AAO also notes the concerns that the applicant's spouse has expressed regarding the impact of relocation on her daughters' health and educational opportunities. The record, however, does not include documentation that establishes the applicant's children would suffer from untreated diseases in Ghana or that they would be unable to obtain adequate educations there. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding.

¹ The AAO notes that the record indicates that the applicant's mother-in-law was staying with him and her daughter in March 2009, but finds no evidence that establishes her presence in the applicant's household represents a resumption of her residence in the United States.

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)). Further, as previously discussed, the applicant's children are not qualifying relatives in this proceeding and the record does not document how any hardships they might experience if they moved to Ghana would result in hardship for their mother, the only qualifying relative. Accordingly, based on the evidence of record, the AAO does not find the applicant to have established that his spouse would experience extreme hardship if she returned to Ghana with him.

To establish that the applicant's spouse would experience extreme hardship if she remained in the United States without the applicant, counsel asserts that, on being notified of the denial of the applicant's waiver application, the applicant's spouse had to seek both medical treatment and counseling, and that the applicant is playing a "vital role" in reducing his spouse's risk of psychiatric hospitalization. Counsel also states that the applicant will suffer financial hardship in the applicant's absence as her income falls below the federal poverty guidelines and that her full-time employment is possible only because the applicant is available to care for their children. Counsel contends that the impacts of separation on the applicant's children should be a factor in this hardship determination as these impacts will exacerbate the hardship experienced by their mother.

The applicant's spouse states that she is already experiencing stress at the possibility of being separated from her husband and that her stress will only increase if the applicant is removed from the United States. Her hardship, she contends, will be made worse by having to witness her daughters growing up without their father and her fear that his absence will have long-term consequences on their emotional development. The applicant's spouse also states that she and her daughters need the applicant's financial support and that she fears she will not be able to provide sufficient food for her children in his absence. She further contends that without the applicant's income, her children will not have the opportunity to attend pre-school and will experience developmental problems that will not allow them to reach their full potential. The applicant's spouse states that her concerns over her ability to support her children will increase her stress levels. She also asserts that she does not know how she will be able to provide care for her children while she is working as she cannot afford childcare services.

In support of the preceding hardship claims, the applicant has submitted a November 2, 2009 report from licensed [REDACTED] [REDACTED] reports that she has been treating the applicant's spouse since September 2009, when the applicant's spouse was referred for counseling by an [REDACTED] [REDACTED] states that she has diagnosed the applicant's spouse with [REDACTED] and that the applicant's spouse's condition was triggered by the denial of the applicant's waiver application. She states that the applicant's spouse's symptoms include a severely depressed mood, persistent worrying, withdrawal behaviors, inability to sleep, a severely decreased appetite and somatic complaints. [REDACTED] also reports that the applicant's spouse's level of functioning at home, in her community and at work has declined, and that the applicant is playing a vital role in reducing his spouse's risk of psychiatric hospitalization. She notes that there are no other immediate family

members able to take over the applicant's role. [REDACTED] concludes that the applicant's spouse is at risk for [REDACTED] if her symptoms continue and that this development would affect her long-term ability to function as a parent and to maintain employment.

The record also includes medical documentation that indicates the applicant's spouse was treated on an emergency basis for nausea with vomiting, headache and acute stress reaction at the [REDACTED] on September 16, 2009. Notes from the physician who treated her, [REDACTED], state that the applicant's spouse appeared anxious and that her symptoms were "likely related to stress response from husbands [sic] possible deportation." [REDACTED] notes also indicate that he will refer the applicant's spouse for outpatient therapy.

The record further contains a copy of the applicant's spouse's W-2 form for 2005, the most recent income documentation in the record, which establishes that her annual income for the year was [REDACTED] a total also reflected on her 2005 tax return. The AAO notes that this level of income is significantly lower than the 2005 federal poverty guideline of [REDACTED] for a family of three, supporting the applicant's spouse's concerns about her ability to support her children in the applicant's absence.

When the evidence of the applicant's spouse's mental health problems, her limited financial resources and the normal hardships created by the separation of a family are considered in the aggregate, the AAO finds the record to establish that the applicant's spouse would experience extreme hardship if his waiver application is denied and she remains in the United States.

Nevertheless, as the record does not also establish that the applicant's spouse would suffer extreme hardship upon return to Ghana, the AAO finds that the applicant has not established eligibility for a waiver under section 212(i) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in considering whether he 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.