

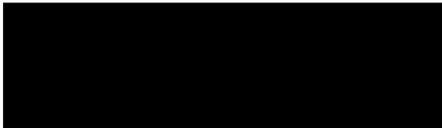
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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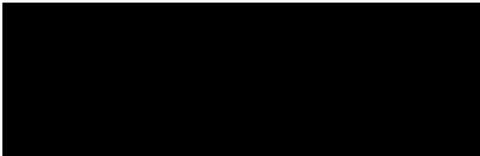
Date: **SEP 28 2010**

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:



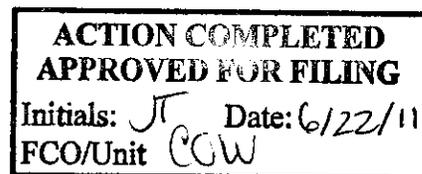
INSTRUCTIONS:

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,

Perry Rhew
Chief, Administrative Appeals Office



DISCUSSION: The waiver application was denied by the Field Office Director, Columbus, Ohio and the matter 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 procuring admission to the United States by fraud or willful misrepresentation. The applicant is married to a U.S. citizen and is the stepfather of a U.S. citizen. He seeks a waiver of inadmissibility under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his family.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would result in extreme hardship to a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision*, dated March 10, 2010.

On appeal, counsel contends that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act and that the AAO should also find the applicant to have been "grandfathered" for the purposes of adjustment under section 245(i) of the Act. *Counsel's brief*, received April 5, 2010.

In support of the waiver application, the record includes, but is not limited to, counsel's briefs, statements from the applicant and his spouse, medical documentation relating to the applicant's mother-in-law, documentation relating to the applicant's spouse's arrests and convictions, country conditions information on Ghana, a letter of support from a civic organization of which the applicant is a member and evidence submitted in support of the applicant's prior adjustment and waiver applications. The entire record was reviewed and considered in arriving at a decision in this matter.

Before considering counsel's assertion that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act, the AAO will address his request for consideration of the applicant's eligibility for adjustment under section 245(i) of the Act. While we note counsel's claims regarding the applicant's eligibility under 245(i), we do not have appellate jurisdiction over an appeal from the denial of an application for adjustment of status. The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in her through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). The AAO cannot exercise appellate jurisdiction over additional matters on our own volition, or at the request of an applicant or petitioner. As a "statement of general . . . applicability and future effect designed to implement, interpret, or prescribe law or policy," the creation of appeal rights for adjustment application denials meets the definition of an agency "rule" under section 551 of the Administrative Procedure Act. The granting of appeal rights has a "substantive legal effect" because it is creating a new administrative "right," and it involves an economic interest (the fee). "If a rule creates rights, assigns duties, or imposes obligations, the basic

tenor of which is not already outlined in the law itself, then it is substantive." *La Casa Del Convaleciente*, 965 F.2d at 1178. All substantive or legislative rule making requires notice and comment in the *Federal Register*.

The AAO now turns to a consideration of the applicant's inadmissibility 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.

On appeal, counsel asserts that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel contends that the applicant has consistently maintained that, although he had the passport of another individual in his possession at the time he entered the United States, he was waived through the port of entry without being asked to show any documentation. The applicant's silence at the border, counsel asserts, does not constitute a section 212(a)(6)(C)(i) misrepresentation, citing to 9 FAM 40.63 N4.2 and *Matter of G-*, 6 I&N Dec. 9 (BIA 1953).

The AAO notes counsel's claim, but finds the record to indicate that, at the time of his July 26, 2005 adjustment interview, the applicant testified that he had arrived in the United States by bus and had presented a British passport issued to another individual. The applicant also acknowledges that he admitted to the allegations set forth in the Notice to Appear issued to him on January 7, 2009, which included the charge that he used another individual's passport to enter the United States as a nonimmigrant. Although the applicant now states that he did not present any documentation to U.S. immigration officials when he crossed the border from Canada on February 6, 1999, this assertion is insufficient to overcome the finding of inadmissibility based on his earlier admissions. Where there are inconsistencies in the record, it is incumbent upon the applicant to resolve them by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). Accordingly, the AAO finds the record to establish that on or about February 6, 1999, the applicant procured admission to the United States using a British passport issued to another individual and that he is, therefore, inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

As the applicant's admission is barred by section 212(a)(6)(C)(i) of the Act,¹ he must seek a waiver of inadmissibility under section 212(i), which provides that:

¹ The record includes documentation that indicates the applicant has sought to terminate his removal proceedings based on his departure from the United States. If the applicant has departed the United States, he may also be inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking admission to the United States (adjustment of status) within ten years of his departure. The applicant entered the United States on or about February 6, 1999 as a nonimmigrant visitor. As the holder of a British passport, it is likely he was admitted under the Visa Waiver Program, allowing him to remain in the United States for up to 90 days and, thereafter, accrued unlawful presence until May 1, 2001, the date on which he filed his first adjustment of status application, which placed him in a period of authorized stay. Although this adjustment application was denied on May 31, 2002, the record

- (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 her child 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

indicates that the applicant had already filed a second adjustment application based on the Form I-130, Petition for Alien Relative, filed by his second wife, and, therefore, remained in a period of authorized stay until February 17, 2006, the date on which the second adjustment application was denied. On February 18, 2006, the applicant again began accruing unlawful presence and did so until his claimed departure from the United States. Accordingly, the record indicates that the applicant accrued more than one year of unlawful presence prior to departing the United States. However, if the applicant satisfies the requirements for a waiver under section 212(i) of the Act, any 212(a)(9)(B) inadmissibility he may have will also be waived.

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.

In support of the applicant’s claim to extreme hardship, counsel asserts that the applicant’s spouse believes that she would be an outcast in Ghana as she has lived her life in the United States; that she has never traveled outside the United States; that she has no social, economic or physical ties to Ghana and does not speak any of its languages. Counsel also contends that the applicant’s spouse has a long family history of cardiovascular disease and diabetes that places her at risk of developing these conditions and that, if left untreated, could be devastating to her health. He reports that the applicant’s spouse is doubtful that she would be able to receive adequate medical care for cardiovascular disease and diabetes or her drug and alcohol abuse in Ghana. Counsel also notes that

the applicant's spouse is afraid that she would be unable to afford the medical care and alcohol and drug treatment that she receives in the United States. Counsel contends that quality health care is nonexistent in Ghana and that where health care is available, it is very expensive.

Counsel further asserts that the applicant's spouse is doubtful that she would find employment in Ghana, where there is high unemployment, because of her age and her extended absence from the U.S. workforce. He contends that relocation to Ghana would be financially disastrous for the applicant's spouse as she has no pension plan or savings, and that there would be no safety net in Ghana to cushion the impact of unemployment. Counsel states that the applicant's spouse also fears that she and the applicant would be socially ostracized if they relocated as the duties performed by the applicant in their household are considered unmanly in Ghana.

The applicant's spouse would also suffer hardship, counsel contends, as a result of being separated from her ailing mother who is dependent on her for emotional and familial support. He states that while the applicant's spouse's mother resides in a nursing and rehabilitation center, her daughter and grandson provide her with an essential family connection. Counsel asserts that the applicant's spouse is her mother's only daughter; that her brothers are either dead, in prison or on drugs and that leaving her mother in their care would be irresponsible. Counsel states that even if the applicant's spouse relocates to Ghana with her mother, there would be no guarantee that she would be able to obtain suitable care for her mother's medical conditions. Counsel also reports that the applicant's spouse is the mother of three children and has joint custody of the two youngest, although only one child lives with her. He indicates that the applicant's spouse does not believe that the children's fathers would allow them to leave the country and that it would be virtually impossible for her to abandon her children.

The record does not include documentary evidence that supports counsel's claim that country conditions in Ghana would pose a threat to the applicant's spouse, prevent her from obtaining employment, endanger her health or result in her social ostracism. The country conditions materials submitted by the applicant include the results of a hospital study on the main causes of heart failure in West Africa; the section on Ghana from Country Reports on Human Rights Practices – 2008, released by the U.S. Department of State on February 25, 2009; online articles on Ghanaian unemployment; the section on Ghana from the CIA World Factbook, updated as of July 30, 2009; and materials from the World Health Organization on health and development in Ghana, including the prevalence of malaria, and an epidemiological country profile on HIV and AIDS. While such materials offer an overview of economic, social and political conditions in Ghana, the record does not demonstrate how the general information they provide relates to the applicant or his spouse. The AAO also notes that while many languages are spoken in Ghana, the official language of the country is English.

With regard to the applicant's spouse's health concerns, the AAO finds no evidence that establishes that the applicant's spouse's family has a long history of cardiovascular disease and diabetes or that she is at risk of developing either disease. The only medical documentation in the record relates to the applicant's mother-in-law and reports that she suffers from a range of medical conditions, including hypoglycemia, hypertension, senile dementia, depressive disorder, esophageal reflux,

urinary incontinence, dizziness and giddiness. The record further fails to demonstrate that the applicant's spouse has a history of drug and alcohol abuse or is being medically treated for these problems. The AAO finds no medical statements or reports relating to the applicant's spouse's abuse of drugs or alcohol. While the applicant has submitted documentation that establishes his spouse was arrested on 19 occasions between 1991 and 2008, he has provided evidence that establishes the grounds for her arrests in only four instances. Court records demonstrate that the applicant's spouse was convicted of unauthorized use of property in 1997, theft in 2001 and of possession of drug paraphernalia in 2007. A second 2007 charge for felony drug possession/abuse was dismissed. There is no information concerning the 15 other arrests or their outcomes, although the AAO notes that at the time the applicant's waiver application was filed in 2008, the applicant's spouse was incarcerated in the Franklin County (Ohio) Community Based Correctional Facility Program for four and one-half to six months.

The AAO also finds that the record fails to document that the applicant's spouse's mother is in any way dependent on her or that being separated from her mother would result in emotional hardship for the applicant's spouse. Further, although counsel claims that the applicant's spouse's siblings are either dead, in prison or on drugs and, therefore, unable to assume her role in her mother's life, the record includes no documentation in support of this claim. 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 further finds that the record fails to document that applicant's spouse has more than one son or that this child's biological father would oppose his relocation to Ghana. *Id.* We note that the only parent identified on the child's 2000 birth certificate is the applicant's spouse. Accordingly, the AAO finds that the applicant has not established that his spouse would suffer extreme hardship as a result of relocating to Ghana.

The second part of the hardship analysis requires an applicant to establish extreme hardship in the event that his or her qualifying relative remains in the United States. In the present matter, counsel contends that the applicant's spouse has a family history of cardiovascular disease and diabetes, although she has not been officially diagnosed with either. Counsel reports that the applicant has helped his spouse take care of herself and that without him, she could become diabetic. Counsel also notes that the applicant's spouse's stress levels have risen as a result of the applicant's immigration problems and that stress is a factor that could trigger either of the diseases to which she is susceptible. He further states that the stress caused by having to choose between relocating to Ghana or remaining in the United States separated from the applicant could trigger the diseases that the applicant's spouse has worked so hard to avoid.

Counsel also asserts that the applicant's spouse would suffer from loneliness and depression in the applicant's absence. In support of this claim, he again submits the January 7, 2009 psychological evaluation of the applicant's spouse prepared by [REDACTED], a licensed professional clinical counselor, which was previously provided with the applicant's January 12, 2009 motion to reopen/reconsider. [REDACTED] finds that the applicant's spouse is suffering from Major Depression, Recurrent, Severe, displays suicidal thinking, and that the applicant's removal will create a negative climate in which she will deteriorate mentally and physically. [REDACTED] also

reports that the applicant's spouse has a history of using drugs and a history of chronic stress that leads to depression. She further notes that as the applicant's spouse's family has a history of cardiovascular disease and diabetes, it will be likely that she will develop these illnesses if her mental and emotional well-being is not cared for.

Counsel reports that the applicant has run the household during the applicant's spouse's numerous absences, has not abandoned her during the difficult times in their relationship and has inspired her to recover from alcohol and drug problems. The applicant's spouse, he states, has been involved in treatment programs while incarcerated in Franklin County Community Based Correction Facility. Counsel also notes that the applicant's spouse has had difficulty maintaining any meaningful employment since 2002 because of drug relapses and her arrest record, and has been limited to temporary agency work. He indicates that she is financially dependent on the applicant and that, as she has been in and out of jail for almost a year, it has been the applicant's income that has kept their family together. In the current economic downturn, counsel contends, the applicant's spouse would probably not be able to support herself, her son and ailing mother.

As previously discussed, the record does not include any medical reports or statements that establish that the applicant's spouse is at risk of cardiovascular disease or diabetes. It also fails to provide sufficient evidence to establish that she suffers from alcohol or drug abuse or that she has been or is enrolled in any substance abuse programs. Although the record documents that the applicant's spouse has been arrested 19 times, no evidence indicates that any of these arrests are alcohol-related and the applicant's one conviction on drug charges is not sufficient proof of a history of repeated drug abuse. The AAO notes the statement from Adult Probation Services, Franklin County regarding the applicant's spouse's presence in the Franklin County Community Based Correctional Facility Program but does not find it to indicate that this program includes any alcohol or drug treatment. The record also fails to establish that the applicant's spouse would be financially responsible for her mother or son in the applicant's absence as it includes no evidence that she or the applicant is currently supporting them. The AAO further observes that the tax returns filed by the applicant and his spouse during the period 2004-2007 do not list either the applicant's mother-in-law or stepson as financial dependents. Neither do they indicate that the applicant's stepson was residing with them during this time period. Moreover, the AAO finds that the court records submitted by the applicant to establish the basis of his spouse's 2007 arrests raise questions as to whether the applicant and his spouse share the same household. These records report her address as [REDACTED], rather than [REDACTED] which was the applicant's address during 2007. The record, as previously noted, also lacks sufficient evidence to demonstrate that the applicant would be unable to obtain employment in Ghana and provide financial support to his family from outside the United States.

The AAO will also give little evidentiary weight to the applicant's spouse's psychological evaluation as it is based on a single interview of the applicant's spouse and fails to provide sufficient detail and analysis to support its conclusions. The AAO notes that [REDACTED] indicates that her interview with the applicant's spouse is supported by the findings of a standardized psychological test that measures 25 symptoms of anxiety and depression. Although she reports the consolidated test results, she fails to identify the symptoms for which she tested or to indicate which of them characterize the

applicant's spouse's emotional state. The AAO also notes that [REDACTED] conclusions are based, in great part, on the personal history provided by the applicant's spouse during her interview, specifically her medical history, including drug abuse. The record, however, as just discussed, does not establish the applicant's spouse's medical history. 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)). Based on the record before us, the AAO does not find the applicant to have established that his spouse would suffer extreme hardship if she were to remain in the United States without him.

As the record fails to establish the existence of extreme hardship to the applicant's spouse caused by his inadmissibility to the United States, he is not eligible for a waiver under section 212(i) of the Act. 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(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.