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**U.S. Citizenship
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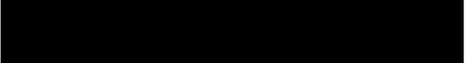


Office: ACCRA, GHANA

Date: **FEB 28 2011**

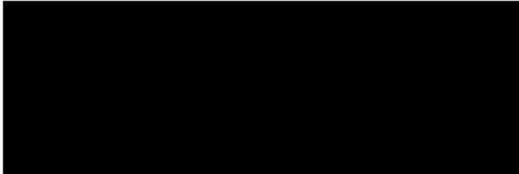
IN RE:

Applicant:



APPLICATION: Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to 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, with a fee of \$630. 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 Field Office Director, Accra, Ghana 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 under 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 procured admission into the United States by fraud or willful misrepresentation and under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is the spouse of a United States citizen and seeks a waiver of inadmissibility in order to reside in the United States with her spouse and children.

The Field Office Director concluded that the applicant had failed to establish that she had a qualifying relative for purposes of an Application for Waiver of Grounds of Excludability (Form I-601). The Form I-601 waiver application was denied accordingly. *Decision of the Field Office Director*, dated January 28, 2008.

On appeal, the applicant asserts that her marriage is valid. *Form I-290B, Notice of Appeal or Motion and attached statement from the applicant*. The applicant also notes that her family is suffering extreme hardship. *Id.*

In support of the waiver application the record includes, but is not limited to, a medical statement for the applicant; a solicitor's statement; statements from the applicant's spouse; a statement from the Ghana Immigration Service; a statement from the Ghana passport control office; statements from the applicant; tax statements; an employment letter for the applicant's spouse; marriage certificates; and divorce certificates. The entire record was reviewed and considered in rendering this decision.

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 on December 10, 1989 the applicant entered the United States without inspection. *Form I-485, Application to Register Permanent Residence or Adjust Status*, dated October 30, 1997. On October 30, 1997 the applicant filed a Form I-485 application to adjust her status to lawful permanent resident pursuant to the Diversity Visa lottery program. *Id.* On October 6, 1998 the District Director denied the applicant's Form I-485 application. *Decision of the District Director*, dated October 6, 1998. On August 2, 1999 the applicant was placed in removal proceedings, and on January 6, 2000 an immigration judge granted the applicant voluntary departure until May 5, 2000. *Form I-862, Notice to Appear; Order of the Immigration Judge*, dated January 6, 2000. The record is unclear as to the exact date of the applicant's departure. Counsel for the applicant asserts that the applicant complied with the order of voluntary departure and timely departed the United States. *Form I-290B, Notice of Appeal or Motion and attached Memorandum in Support of Appeal*. According to the record, the applicant did not report her departure to United

States immigration authorities and obtained a B2 visa from the U.S. Consulate in Accra, Ghana in 2002. On November 16, 2002 the applicant was admitted to the United States at Newark, New Jersey with a B-2 visa. *Stamp in applicant's passport*. She remained until December 1, 2002. *Form I-601, Application for Waiver of Grounds of Inadmissibility*. On April 11, 2003 the applicant was admitted to the United States with a B-2 visa at Philadelphia, Pennsylvania. *Id.* She remained until April 16, 2003. *Id.* On August 23, 2003 the applicant attempted to gain admission to the United States with a B-1/B-2 visa, and when questioned by an immigration officer, she admitted that she had not mentioned her prior removal proceedings when she applied for a nonimmigrant visa at the U.S. Consulate in Accra in 2002. *Form I-867AB, Record of Sworn Statement*, dated August 23, 2003. The applicant was found inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact and was expeditiously removed from the United States. *Id.*

On June 13, 2003 the applicant married her spouse, a United States citizen, in Ghana. *Marriage certificate*. On October 1, 2003 the applicant's spouse obtained a divorce from his prior spouse. *Divorce certificate*. On August 16, 2004 the applicant again married her spouse in Ghana. *Marriage certificate*. A statement from the counsel of the applicant's spouse notes that she obtained a divorce for the applicant's spouse and prior to sending the final paperwork to court, she advised him that they were ready to finalize the divorce. *Statement from [REDACTED]*, dated February 18, 2008. She further notes that the applicant's spouse misunderstood his counsel to mean that the receipt of the decree would be immediate. *Id.* The applicant filed a Form I-601 waiver application on February 7, 2007. The AAO notes that although the June 13, 2003 marriage to her spouse is invalid as the applicant's spouse was not yet divorced, the August 16, 2004 marriage is valid. As the applicant filed her Form I-601 waiver application after her valid marriage occurred, the AAO finds that her United States spouse is a qualifying relative for purposes of this waiver application.

According to the Memorandum in Support of Appeal, on September 30, 2002 the applicant was issued a B-2 nonimmigrant visa by the United States Consulate in Ghana and failed to disclose the previous period of time in the United States and failed to disclose the prior removal proceedings. *Form I-290B, Notice of Appeal or Motion and attached Memorandum in Support of Appeal*. While the record is unclear as to whether the applicant timely departed the United States and complied with her order of voluntary departure, the AAO finds that failing to disclose her previous period of time in the United States and her prior removal proceedings are material misrepresentations because they had the tendency to shut off a line of inquiry relevant to the alien's eligibility and which might well have resulted in proper determination that she be excluded. *Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (AG 1961). As such, the AAO finds the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO notes that the Field Office Director also found the applicant to be inadmissible under section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. Although it is unclear whether the applicant complied with the immigration judge's order of voluntary departure or when she departed the United States, it appears that the applicant was unlawfully present in the United States from October 6, 1998, when her application for adjustment of status was denied, until January 6, 2000, when she was granted voluntary departure. Even if the applicant is still inadmissible for having been unlawfully present in

the United States for more than one year and seeking readmission within ten years of her last departure from the United States, the requirements for a waiver under section 212(a)(9)(B)(v) of the Act, including the showing of extreme hardship to a qualifying relative, are identical to the requirements for a waiver under section 212(i).

Section 212(i) of the Act provides, in pertinent part:

- (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 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 USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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 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 Board 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 Board 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 Board 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 Board 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 Board 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) [REDACTED] 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.

If the applicant’s spouse joins the applicant in Ghana, the applicant needs to establish that her spouse will suffer extreme hardship. The applicant’s spouse was born in the United States. *United States passport*. The record does not address how the applicant’s spouse would be affected if he resides in Ghana. The record fails to indicate whether the applicant’s spouse has familial and cultural ties to Ghana. The record does not address employment opportunities for the applicant’s spouse in Ghana, nor does the record document, through published country conditions reports, the economic situation in Ghana and the cost of living. The record makes no mention of whether the applicant’s spouse suffers from any type of health condition, physical or mental, that would require treatment in Ghana and if so, whether he would be able to receive adequate care. When looking at the record before it, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in Ghana.

If the applicant’s spouse resides in the United States, the applicant needs to establish that her spouse will suffer extreme hardship. As previously noted, the applicant’s spouse was born in the United States. *United States passport*. The record does not address whether he has family members in the

United States. The applicant asserts that her entire family is suffering due to her separation from the applicant. *Form I-290B, Notice of Appeal or Motion and attached statement from the applicant.* She notes that she and her children have constantly been sick due to the separation. *Id.* The record includes a medical statement for the applicant noting that she has been under a lot of stress with progressive evidence of the stress related diseases of hypertension, anorexia, insomnia and depression. *Statement from [REDACTED]* undated. While the AAO acknowledges this statement from a licensed healthcare professional, it notes that neither the applicant nor her children are qualifying relatives for the purposes of this case and the record fails to address how any hardship the applicant may endure affects her spouse, the only qualifying relative in this case. The applicant's spouse notes that being separated from the applicant has been difficult, challenging and emotionally turbulent. *Statement from the applicant's spouse,* dated January 24, 2007. While the AAO acknowledges the emotions of the applicant's spouse, it notes that the record fails to include documentation, such as a psychological report from a licensed healthcare professional, regarding the psychological effect the separation is having upon the applicant's spouse. The applicant's spouse notes that he is facing financial difficulties on a daily basis, having to transfer money to the applicant for medical attention as well as basic necessities and having to pay for telephone bills for regular communication. *Id.* While the AAO acknowledges the statements of the applicant's spouse, it notes the record fails to include documentation, such as money transfer receipts, medical bill receipts and telephone bills, to support such assertions. The record also fails to include documentation, such as mortgage/rent statements, credit card statements, and utility bills, showing the expenses of the applicant's spouse. Going on record without supporting documentary evidence will not meet the burden of proof of 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)). Additionally, there is nothing in the record to show that the applicant would be unable to contribute to her family's financial well-being from a location other than the United States. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to her spouse if he were to reside in the United States.

As the record has failed to establish the existence of extreme hardship to the applicant's qualifying relative caused by the applicant's inadmissibility, the applicant is not eligible for a waiver of her inadmissibility under section 212(a)(6)(C)(i) of the Act. 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(a)(6)(C) 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.