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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

H5

[redacted]

DATE: JUL 14 2011 Office: CHICAGO, ILLINOIS FILE: [redacted]

IN RE: Applicant: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

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,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Chicago, Illinois, and 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 procuring entry into the United States through fraud or the willful misrepresentation of a material fact. The record reflects that the applicant is married to a Lawful Permanent Resident (LPR) of the United States and is the beneficiary of an approved Petition for Alien Relative (Form I-130) filed on her behalf. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, U.S.C. § 1182(i), in order to reside in the United States with her spouse and children.

The district director found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated June 11, 2008.

On appeal, the applicant through counsel asserts that denial of her waiver request will result in extreme hardship to her spouse and children. *See Form I-290B*, filed on July 11, 2008 and the accompanying brief from counsel in support of the appeal.

The record includes, but is not limited to, statements from the applicant and her spouse, counsel's brief in support of the waiver application; a statement from the applicant's daughter; a statement from the applicant's mother-in-law; medical documentation relating to the applicant, her spouse and her mother-in-law; supportive statements from friends; copies of tax and other financial documents; and copies of health information relating to Ghana. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) In general.-Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.
>
> . . . .
>
> (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

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

> (i) (1) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of

> the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien...

In the present case, the record reflects that on February 20, 1989, the applicant procured entry into the United States by claiming to be a United States citizen. The applicant presented a United States passport belonging to another person to gain admission into the United States. On June 29, 1993, the applicant's LPR spouse filed a Petition for Alien Relative (Form I-130) on the applicant's behalf, which was approved on July 14, 1993. On August 28, 1998, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). The district director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act based on her falsely claiming to be a United States citizen in 1989. The applicant filed a Form I-601 waiver application. On June 11, 2008, the district director denied the Form I-485 and the Form I-601 finding that the applicant failed to demonstrate extreme hardship to a qualifying relative.

The AAO notes that aliens making false claims to U.S. citizenship on or after September 30, 1996 are ineligible to apply for a waiver. *See* Sections 212(a)(6)(C)(ii) and (iii) of the Act. Provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 afford aliens in the applicant's position, those making false claims to U.S. citizenship prior to September 30, 1996, eligibility to apply for a waiver.

> In considering a case where a false claim to U.S. citizenship has been made, Service [CIS] officers should review the information on the alien to determine whether the false claim to U.S. citizenship was made before, on, or after September 30, 1996. If the false claim was made <u>before</u> the enactment of IIRIRA, Service [CIS] officers should then determine whether (1) the false claim was made to procure an immigration benefit under the Act; and (2) whether such claim was made before a U.S. Government official. If these two additional requirements are met, the alien should be inadmissible under section 212(a)(6)(C)(i) of the Act and advised of the waiver requirements under section 212(i) of the Act.

Memorandum by Joseph R. Greene, Acting Associate Commissioner, Office of Programs, Immigration and Naturalization Service, dated April 8, 1998 at 3.

In this case, the applicant admitted that she misrepresented herself to an immigration officer on February 20, 1989, and was admitted into the United States as a returning United States citizen, a benefit under the Act. As the false claim was made prior to September 30, 1996, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, for which a waiver is available.

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 of her 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-Moralez,* 21 I&N Dec. 296, 301 (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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *but see*

Matter of Ngai, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In this case, the record reflects that the applicant's spouse, , is a native of Ghana and a Lawful Permanent Resident of the United States. The applicant and her spouse were married in Chicago, Illinois, on August 8, 1990, and they have two children, (21 years old) and (14 years old). The applicant's spouse states that he and his family would suffer emotionally and financially if the applicant is not permitted to remain in the United States.

The applicant's spouse states the following: that he and the applicant have been married for almost 20 years; that they care for each other very much; that the applicant has supported and loved him throughout the most difficult times of his life, even though his action had hurt the family; that the applicant never stopped caring about him and the family; and that he cannot imagine how his life can continue without the applicant by his side. He states that the applicant is the one who has instilled values in their children and he fears that without the applicant's presence and reminders of these values, their children would lack spiritual guidance and support. He states that his mother has various medical problems and that the applicant is the one who takes good care of his mother because of her profession as a Certified Nurse's Assistant (CNA). The applicant's spouse states that because of his "inflexible" work schedule, he does not have the time to take care of their children and his mother, and he is concerned that no one will be able to take care of his mother and their children if the applicant is removed from the United States. He further states that knowing that the applicant may be removed from the United States has already caused damage to his children, that they are displaying some signs of depression and that "it is causing psychological and emotional effects which if [they] continue, can be very damaging. I worry about my children's emotional states and how a final, negative decision in [the applicant's] case can and will completely devastate them." *See Undated Affidavit from* *submitted with the Appeal.*

The applicant's daughter, , states that she is devastated by the prospect that the applicant may be removed from the United States because "I've had my mother by my side for 18 years and I want it to stay that way." *See Undated Statement by* states that she is about to start college and knows that she can always come back to her mother's caring arms if she has any difficulties at school. also states that she is concerned about the psychological effect separation from their mother would have on her brother, she says is a "mommy's boy." *Id.* The applicant's mother-in-law, , states that the applicant takes care of her and that she would suffer hardship without the applicant's continued care and support. Counsel asserts that the applicant's spouse suffers from high blood pressure, hypertension and Type II Diabetes, and that he is on medications for these medical conditions. *See Counsel's Brief in Support of the Appeal,* dated August 8, 2008. The record contains a copy of a "Prescription Profile" for the applicant's spouse showing the medications he is taking. Also in the record is a copy of a letter from , dated July 30, 2008, relating to the applicant's mother-in-law. states that the applicant's mother-in-law suffers from hypertensive heart disease, severe osteoarthritis, hyperlipidemia, obesity and anxiety. further states that the applicant's mother-in-law is scheduled to undergo knee replacement surgery

on August 22, 2008, and that with the surgery, "she will likely be able to walk more comfortably." *See Letter from* dated July 30, 2008.

The AAO acknowledges that separation from the applicant may cause some challenges for the applicant's spouse. However, it does not find the evidence in the record sufficient to demonstrate that even when considered in the aggregate, the difficulties or challenges the applicant's spouse faces are more serious than the types of hardship a family would normally suffer when faced with the prospect of a spouse's removal or exclusion from the United States. While the record shows that the applicant's spouse has health problems, it does not contain evidence to demonstrate the severity of his medical conditions, how they affect his ability to meet his responsibilities to his children and his mother, or how his medical condition would be affected by the applicant's absence. The letter from the applicant's employer indicates that she currently carries Medical and Dental Policies for her family through their company. The record, however, does not indicate that the applicant's spouse would be unable to obtain medical insurance through his own employer to cover his and his children's medical treatment. As to the applicant's mother-in-law, the letter from demonstrates that she has health problems, but it does not indicate that she requires the applicant's and her spouse's assistance or that any care she might require in the applicant's absence would place an excessive burden on the applicant's spouse. Also, the applicant's spouse states that his mother does not live with them and that he has other siblings residing in the United States. Although the applicant's spouse states that his siblings are not involved with his mother's care and are not in a position to provide assistance to her, there is nothing in the record that supports this statement.

As to financial hardship, the applicant's spouse claims that he would suffer extreme financial hardship if the applicant is removed from the United States. However, the record does not contain detailed information on the family's current income and expenses, including the costs of the applicant's daughter's education. Without such documents, the AAO cannot make a determination on the nature and severity of any financial hardship to the applicant's spouse.

The AAO acknowledges the applicant's spouse claim that the possibility of losing the applicant has resulted in emotional and psychological hardship to his children. The record, however, does not contain any medical records or other documentation to demonstrate that the applicant's children have suffered emotional and psychological harm. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO also notes that hardship to the applicant's children is not considered in section 212(i) proceedings except to the extent that it affects the applicant's spouse, the only qualifying relative in this case. In the present case, the record fails to demonstrate how any emotional hardship experienced by the applicant's spouse's children has affected the applicant.

Therefore, based on the evidence in the record, the AAO finds that the applicant has failed to establish that her spouse would suffer extreme hardship if her waiver request is denied and he remains in the United States maintaining his employment.

The applicant provides the following reasons why he does not want to relocate to Ghana: he has resided in the United States for a very long time; he has family ties in the United States that will be impacted if he were to relocate to Ghana with the applicant, particularly his mother because there will be no one to take care of her; his children have great educational opportunities in the United States, which they will lose if they relocated to Ghana; he is a Lawful Permanent Resident, who will not be able to leave the United States for extended periods of time without risking his lawful permanent resident status. *See Undated Affidavit from* , *submitted with the Appeal.* Counsel asserts that the applicant's spouse spent several years fighting his immigration case before prevailing in front of the Immigration Judge, and that his immigration history makes it impossible for him to move to any other country without the fear of losing his legal residency in the United States. *See Counsel's Brief in Support of the Appeal,* dated August 8, 2008. Counsel also asserts that the applicant's spouse's departure from the United States could affect his health because he suffers from several medical problems, that he is currently taking medications for high blood pressure, hypertension and Type II Diabetes, and that there is concern that these conditions would significantly worsen if the applicant's spouse had to move to Ghana, where overall the price of medicine is "high and unaffordable for many." *Id.* The record contains a copy of a "Prescription Profile" for the applicant's spouse from August 1, 2007 through August 5, 2008, showing the various medications he is taking.

The AAO notes the applicant spouse's long-term residence in the United States, his significant family ties, his long-term employment, the difficulty of maintaining his lawful permanent residence status if he resides in Ghana, and the lack of good and affordable health care in Ghana, as documented by the country conditions information in the record. When considered in the aggregate, the AAO finds these hardship factors to establish that the applicant's spouse would suffer extreme hardship if he relocates to Ghana with the applicant.

Although the applicant has established that her spouse would experience extreme hardship if he relocates to Ghana, the evidence in the record does not similarly demonstrate that he would suffer extreme hardship if he remains in the United States. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(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.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.