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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

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Date: JUL 26 2011

Office: BALTIMORE, MD

FILE: 

IN RE: Applicant: 

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:

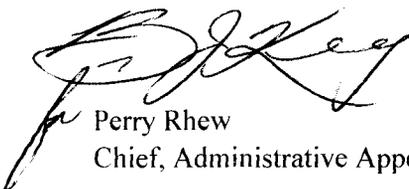


INSTRUCTIONS:

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, 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, Baltimore, Maryland. A subsequent appeal to the Administrative Appeals Office (AAO) was dismissed by the Acting Chief, AAO, on March 6, 2009. The matter is again before the AAO on a motion to reopen. The motion will be granted. The AAO's prior decision will be affirmed. The waiver application will be denied.

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 attempted entry into the United States by willfully misrepresenting a material fact. The applicant is married to a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 her United States citizen husband.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated December 21, 2006.

The Acting Chief, AAO, dismissed the applicant's appeal finding that the applicant had failed to establish extreme hardship to her U.S. citizen spouse. In dismissing the appeal, the AAO noted that the applicant failed to submit evidence to establish hardship to her husband, the qualifying relative.

On motion, counsel for the applicant asserts that the applicant has established extreme hardship to her U.S. citizen spouse. *See Form I-290 and attachments.*

With the motion to reopen, counsel submits additional evidence, including a Psychological Assessment, dated March 20, 2009, from [REDACTED]; a March 19, 2009 affidavit from the applicant and the applicant's spouse; income tax returns with Form W-2 Wage and Tax Statements, for the years 2006, 2007, and 2008; recent household bills; birth certificates and elementary school records and awards for two of the applicant's children; documents pertaining to the applicant's enrollment in a Licensed Practical Nurse Program; and a U.S. Department of State - 2007 Country Report on Human Rights Practices for Ghana. In addition, the record includes, but is not limited to, an affidavit from the applicant, submitted with her appeal; and a letter from the applicant, submitted with the Form I-601, describing the hardship claimed. The entire record was reviewed and considered in arriving at a decision on the motion.

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).

The record reflects that on April 7, 2001, the applicant sought entry into the United States under the Visa Waiver Program by presenting a document belonging to a [REDACTED]. The applicant stated that she was allowed to withdraw her application for entry and return to Britain. On March 18, 2002, the applicant obtained a B1/B2 non-immigrant visa, issued in Accra, Ghana. The applicant was admitted, at the Baltimore Washington Thurgood Marshall International Airport, Maryland, as a B-2 non-immigrant, on April 28, 2002. Her authorized stay expired on October 27, 2002. In addition, on her Form I-485, Application to Register Permanent Residence or Adjust Status, filed March 27, 2006, the applicant indicated, at Item 10, Part 3, that she had never, by fraud or willful misrepresentation of a material fact, sought to procure a visa, or entry into the United States, or any other immigration benefit.

The applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to obtain a benefit under the Act, by misrepresenting a material fact. The applicant does not dispute that she sought to gain entry into the United States under the Visa Waiver Program by presenting a passport belonging to another person; and, that she misrepresented a material fact on her Form I-485 application.

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...

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 USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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.

The applicant states that she has three U.S. citizen children and her removal will devastate her family and separation will result in extreme hardship for them, especially her children, as "they are very young and definitely need the support, care, good upbringing, good direction, protection and love from both parents. She asserts that the children will not understand her not being with them. The applicant's spouse also states that she cannot imagine how her husband will be able to raise three small children by himself and that responsibility "will greatly affect every aspect of [her husband's] life." The applicant

also states that she is attending school to become a licensed practical nurse (LPN), which will enable her to be of help to the community.

In a psychological assessment, [REDACTED] states that the “[applicant] is the primary care taker of the children. She attends to the physical and emotional needs, helps them with homework, and also manages the household. [The applicant’s spouse] has a day job and also works 3 nights,” as a security officer. [REDACTED] also states that the applicant’s spouse “presented as very scared and in despair, just with the thought that he may be separated even for a short time from his wife.” [REDACTED] states that the applicant and her husband “live in daily fear of being separated... Any separation or disturbance of the family life would derail their lives.” The evaluation, however, focuses more on the applicant and the children. [REDACTED] finds the applicant meets the criteria for Generalized Anxiety Disorder and that the fear of separation on the part of the applicant and her spouse may adversely affect their children, undermining their emotional and academic success. He provides a mental health diagnosis for the applicant, rather than for the applicant’s spouse, the qualifying relative, and fails to indicate how the state of the applicant’s mental health affects her spouse. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative.

It is noted that beyond the psychological assessment, there is nothing in the record to support the specific hardship claims made by the applicant. In addition to the limited documentation, it is also noted that the hardships the applicant indicates would be suffered by her spouse and children are described in very general terms, even in the psychological assessment.

It is noted that on motion, in support of a financial hardship claim, counsel has submitted financial documentation, including income tax returns with Form W-2 Wage and Tax Statements, for the years 2006, 2007, and 2008; Earnings Statements dated February 27, 2009, and March 13, 2009; and household expenses, including a \$148.48 Verizon telephone bill, a \$116.65 Washington Gas bill, a \$74.12 Washington Suburban Sanitary Commission water and sewer bill, a \$45.12 Pepco electric bill, and a \$86.63 Liberty Mutual insurance bill. The applicant states that she earns \$5,000.00 as a babysitter and that she is the primary caregiver for the children. [REDACTED] states that the applicant’s spouse works a fulltime job and part-time at night as a security officer.

However, no specific claim of financial hardship has been made on behalf of the applicant’s spouse if he remains in the United States. The applicant does not indicate whether, and the extent to which the applicant’s spouse will be financially impacted if she departs to Ghana. In the absence of clear assertions from the applicant, the AAO may not speculate as to what financial hardships her spouse would suffer as a result of separation.

It is noted that were the applicant to depart to Ghana, the applicant’s spouse may be left with young children to care for without the assistance of the applicant. However, the applicant does not provide sufficient details of the family’s circumstances, such as any alternatives for childcare available to the family, to allow an assessment of how the care of the children will impact the applicant’s spouse.

The AAO finds, therefore, when considered in the aggregate, the applicant has failed to establish that her U.S. citizen spouse will experience hardship beyond what would normally be expected as a result of separation.

Regarding hardship in Ghana, the applicant states that the country is a poor third world country with poor economic conditions and separation from her family will have a significant impact on her health. However, the applicant does not describe her health condition and the record does not include documentation regarding the applicant's health. Also, the applicant does not indicate how her spouse would be affected by her health condition. The applicant submits a 2008 Department of State *Country Report on Human Rights Practices in Ghana*. However, the applicant does not indicate how the applicant's spouse, a native of Ghana, would be impacted by the country conditions described in the Department of State report.

The AAO finds, therefore, when considered in the aggregate, that the applicant has failed to establish that her U.S. citizen spouse will experience extreme hardship in Ghana if her relocates there with her.

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(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 AAO will affirm its prior decision.

**ORDER:** The motion is granted. The previous decision of the AAO, dated March 6, 2009, is affirmed. The waiver application is denied.