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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: WASHINGTON DC

FILE: 

IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the 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.

Thank you,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Washington, DC. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

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 Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is the daughter of U.S. citizen parents and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her parents and child in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the Field Office Director*, dated January 16, 2009.

On appeal, counsel contends that the field office director erred in finding that the applicant's parents would not suffer extreme hardship if the applicant's waiver application were denied, particularly considering the fact that the applicant has HIV infection and "would inevitably die a premature and agonizing death" if she returned to Ghana.

The record contains, *inter alia*: an affidavit from the applicant; a letter from the applicant's father, [REDACTED]; a letter from the applicant's mother, [REDACTED] letters of support, including from the applicant's brother and the family's church; a letter from the applicant's employer; a copy of the U.S. Department of State's Country Reports on Human Rights Practices for Ghana, a report from the World Health Organization (WHO) addressing HIV infection in Ghana, and other background materials; copies of tax records and other financial documents; letters from the applicant's physicians; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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.

Section 212(i) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 permanent resident spouse or parent of such an alien . . . .

In this case, the applicant concedes that she entered the United States in 1999 using a photo-switched passport. *Affidavit of [REDACTED]*, dated July 29, 2008; *Brief in Support of Appeal to the Administrative Appeals Office* at 1, dated March 12, 2009. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for willful misrepresentation of a material fact in order to procure an immigration benefit.<sup>1</sup>

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

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<sup>1</sup> The applicant also seeks a waiver pursuant to section 212(g) of the Act due to her HIV infection. The AAO notes that as of January 4, 2010, HIV infection is no longer considered a communicable disease of public health significance. Therefore, the applicant is no longer inadmissible pursuant to section 212(a)(1)(A)(i) of the Act, 8 U.S.C. § 1182(a)(1)(A)(i).

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 applicant states that she is HIV positive and learned of this status in 1997. According to the applicant, when she was in Ghana, she became ill, developing opportunistic infections associated with HIV and feared she would die from AIDS. Therefore, the applicant states she entered the United States in 1999 not to conceal a crime, but simply to facilitate her ability to live with HIV. The applicant states that since she arrived in the United States, she has received the medical attention she needs to live with HIV. The applicant contends that if she returned to Ghana, her survival would be in peril. She states she has a U.S. citizen child and, as a single mother, would be an outcast. She states her parents would be forced to financially support her and her child, which would be an extreme financial hardship on them, particularly considering they already support the applicant’s two younger brothers. In addition, the applicant states her parents would suffer extreme emotional hardship if she returned to Ghana because they will be constantly in fear that she will die of AIDS. According to the applicant, it will be impossible for her to receive the medication she needs to live with HIV in Ghana. She contends that there is no health insurance in Ghana to cover the costs of medications, which would cost more than \$1,000 per month. She states it would only be a matter of time before her body would succumb to the virus. *Affidavit of* [REDACTED] *supra*. Letters from the applicant’s physicians confirm that the applicant has HIV infection that is currently controlled with a “cocktail” or regimen of drugs for treatment. *Letter from* [REDACTED], dated July 21, 2008; *Letter from* [REDACTED], dated April 29, 2008.

The applicant’s father, [REDACTED] contends that if his daughter returns to Ghana, she will be one of the many women with HIV infection who is rejected by society. He contends there is a lot of stigma because people in Ghana do not understand HIV. He states that she would not have anyone to help take

care of her in Ghana and the emotional and mental burden would break his family. In addition, [REDACTED] states that if his granddaughter moves to Ghana with the applicant, she will be an outcast because she is female and because her mother has HIV. He contends that if his granddaughter remained in the United States without the applicant, she would bear tremendous hardship losing her mother. Furthermore, [REDACTED] states he has three other children, two of whom live with him at home and financially support. *Letter from [REDACTED]*, dated July 15, 2008.

A letter from the applicant's mother, [REDACTED] states that she fears for her daughter's survival if she is sent back to Ghana. [REDACTED] contends her daughter will be subject to discrimination in Ghana and will be an outcast. In addition, [REDACTED] states that her family will assume care for the applicant's daughter if necessary, but she states that she is painfully aware of the limitations of raising her granddaughter without a mother's presence. Furthermore, [REDACTED] states that if the applicant returned to Ghana, she and her husband would be forced to financially support the applicant, causing them extreme financial hardship. *Letter from [REDACTED]*, dated July 15, 2008.

Upon a complete review of the record, the AAO finds that the applicant's mother and father will suffer extreme hardship if the applicant's waiver application were denied. The record shows that [REDACTED] is currently fifty-nine years old and has lived in the United States since at least September 1996 when he began working for his current employer. [REDACTED] is currently fifty-two years old and has lived in the United States since at least 1990 when she became a lawful permanent resident. The record shows that in addition to the applicant, the couple has three other children, all of whom are U.S. citizens and the youngest of whom is currently fifteen years old. Furthermore, the record shows that the applicant has a U.S. citizen daughter who is currently five years old.

In addition, the record shows that the applicant has HIV infection, that she has received treatment for her condition since 1999, and that she is presently in good health as a result of being very compliant with her medications. The record contains documentation addressing HIV infection in Ghana. According to a World Health Organization (WHO) report in the record, in 2003, of the 52,000 people in need of antiretroviral therapy for HIV infection, less than 50% were treated. *World Health Organization 2005, Estimated Number of People Needing Antiretroviral Therapy, Ghana* (stating that the target was to treat 50% of the estimated need by 2005). The WHO attributed the major challenge to HIV treatment to "human resource capacity," citing it as "the major bottleneck for scaling up the national HIV/AIDS response." *Id.* In addition, the AAO takes administrative notice that according to the U.S. Department of State, medical facilities in Ghana remain limited and discrimination against women and persons with HIV or AIDS continues to be a problem. *U.S. Department of State, Country Specific Information, Ghana* August 17, 2010; *U.S. Department of State, Country Reports on Human Rights Practices, Ghana*, dated April 8, 2010. Although hardship to the applicant herself can be considered only insofar as it results in hardship to a qualifying relative, in this case, the AAO finds that the applicant's HIV infection, a serious and chronic health condition, causes extreme emotional harm to the applicant's parents due to concern about the applicant's health and well-being in Ghana, a concern that is beyond the common results of removal or inadmissibility. Considering all of these unique factors cumulatively, the AAO finds that the effect of separation from the applicant on the applicant's parents goes above and beyond the experience that is typical to individuals separated as a

result of inadmissibility or exclusion and rises to the level of extreme hardship. For the same reasons, the AAO finds that moving back to Ghana to avoid separation would be an extreme hardship for the applicant's parents. The AAO therefore finds that the evidence of hardship, considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that Mr. and Mrs. Eshun face extreme hardship if the applicant is refused admission.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's willful misrepresentation of a material fact in order to procure an immigration benefit, periods of unauthorized presence in the United States; and periods of unauthorized employment. The favorable and mitigating factors in the present case include: significant family ties in the United States including her U.S. citizen parents, daughter, and brothers; the extreme hardship to the applicant's parents, daughter, and siblings if she were refused admission; a letter from the applicant's employer describing her as a very responsible professional; a letter from the applicant's church describing her as a person of good moral character, a loved Sunday school teacher, and a wonderful mother; and the fact that the applicant has not had any arrests or convictions in the United States.

The AAO finds that, although the applicant's immigration violation is serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.