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

U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

DATE: JUL 29 2011 Office: NEWARK, NJ (MT. LAUREL, NJ) 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.

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Ghana who was found to be inadmissible to the United States pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i), for procuring admission to the United States by fraud or willful misrepresentation of a material fact. The applicant's spouse and two children are U.S. citizens. She seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had failed to establish extreme hardship to a qualifying relative and the application was denied accordingly. *Decision of the District Director*, dated March 12, 2009.

On appeal, counsel asserts that the applicant's spouse and children would experience extreme hardship. *Form I-290B*, received April 13, 2009.

The record includes, but is not limited to, prior counsel's brief, the applicant's spouse's statements, educational records, a counselor's evaluation, letters of support, country conditions information on Ghana and medical records. The entire record was reviewed and considered in rendering a decision on the appeal.

The record reflects that the applicant presented a fraudulent passport when procuring admission to the United States on or around October 10, 1993. Based on this misrepresentation, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.[1]

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.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the

[1] The AAO notes the applicant's June 13, 1996 conviction for preparing and submitting a fraudulent passport application under 18 U.S.C. § 1028. She is not inadmissible under section 212(a)(6)(C)(ii) of the Act for a false claim to U.S. citizenship as her false claim took place before September 30, 1996. It will not address whether this is a crime involving moral turpitude rendering her inadmissible under section 212(a)(2)(A)(i)(I) of the Act, as a waiver under section 212(i) of the Act would also result in a waiver under section 212(h) of the Act. In addition, the AAO will not address whether the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act applies.

> 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 children can be considered only insofar as it results in hardship to a qualifying relative, in this case the applicant's spouse. 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,* 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.

Counsel states that the applicant's spouse was born in the United States; he has lived his entire life here; he is 71 years old and suffering from serious medical conditions; his medical conditions would not be addressed in Ghana due to Ghana's "meager healthcare expenditure"; it is unlikely he would find a job in Ghana; they would be in poverty even if either he or the applicant found employment; and their children would have trouble getting an education due to the relevant costs and would suffer due to the poor health care in Ghana. *Counsel's Brief*, dated February 19, 2009. The applicant's spouse states that he would not get the medical care he needs in Ghana, that he has never been to Ghana and he would not be able to support his family if he lived in Ghana. *Applicant's Spouse's Statement*, dated February 13, 2009. The record includes country conditions information detailing life expectancies, work conditions and human rights issues in Ghana.

The record contains a letter from the applicant's spouse's physician in which she states that she is treating the applicant's spouse for hypertension, allergic rhinitis, and acute vertigo attacks due to benign positional vertigo; he was admitted to the hospital with a diagnosis of acute vertigo on December 17, 2008 and he was placed on medication; he has had several acute episodes of vertigo at home for which medication has been prescribed; and he has been advised not to drive as his condition can occur at any time. *Letter from* [redacted] dated April 2, 2009. The record includes medical records for the applicant's spouse.

Considering the unique factors presented, including the applicant's spouse's serious medical issues and age, his lack of ties to Ghana, his ties to the United States and issues related to his children, the AAO finds that the applicant's spouse would suffer extreme hardship if he relocated to Ghana.

The applicant's spouse states that he fell at home and hit his head on December 17, 2008; he has been unable to work since the accident; he has fallen several times since then and has applied for disability; he is taking many medications; he would not be able to survive without the applicant; he cannot care for their two young children by himself; and the applicant works and cares for the children. *Applicant's Spouse's Statement.* The applicant's spouse's physician states that it would be impossible for the applicant's spouse to care for his children without the applicant and it is important for him to have the applicant's support to cope with his medical condition. *Letter from* The record shows that the applicant's spouse's employer terminated his employment due to his continued absence from work and his unavailability to work based on his continued disability. *Letter from* dated March 18, 2009. A counselor who interviewed the family details the role of the applicant in caring for the family and the hardship that the applicant's spouse is experiencing. *Counselor's Evaluation*, dated February 18, 2009. The record reflects that the applicant's daughter has regressed significantly in her class work and in her behavior. *Educational Record*, dated March 5, 2009. The applicant's children's doctor lists the medical histories for the children and states that the applicant brings the children in for most of their visits and it would be important for her to continue to do this. *Letter from* dated April 2, 2009.

Considering the unique factors presented, including the applicant's spouse's serious medical issues and age, issues with the children, his inability to work and his dependence on the applicant, the AAO finds that the applicant's spouse would suffer extreme hardship, were he to remain in the United States without the applicant.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

> In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the applicant's misrepresentation in procuring admission to the United States, criminal conviction, unauthorized period of stay, unauthorized employment and misrepresentation on her Form I-102, Application for Initial/Replacement Nonimmigrant Arrival-Departure Document.

The favorable factors include the presence of the applicant's U.S. citizen spouse and children, extreme hardship to her spouse, letter related to her good character and the lack of a criminal conviction since 1996.

The AAO finds that the violations committed by the applicant cannot be condoned. Nevertheless, the AAO finds that 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.

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 met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained. The application is approved.