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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
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Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
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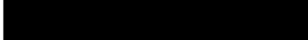
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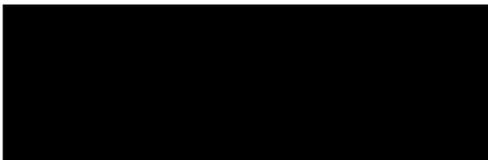
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DATE: **MAY 03 2011** Office: ACCRA, GHANA

FILE: 

IN RE: 

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 be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

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 a citizen of Ghana who used a photo-substituted passport containing a U.S. visa in an attempt to enter the United States. The applicant 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). She is the wife of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i) in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to her admission would impose extreme hardship on a qualifying relative, her U.S. citizen husband, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) October 28, 2008.

On appeal, counsel for the applicant asserts that the applicant's spouse will suffer extreme hardship if the applicant is excluded from the United States. *Form I-290B*, received November 24, 2008.

Section 212(a)(6)(C) Misrepresentation, states in pertinent part:

- (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 chapter is inadmissible.

The record indicates that the applicant presented false documents when attempting to enter the United States in 1996, and thus attempted to enter the United States by materially misrepresenting her identity. Therefore, the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

The record contains, but is not limited to, following evidence: a statement from counsel for the applicant; a statement from the applicant; school records relating to the applicant's children; training certificates and loan application materials for the applicant's 19 year old son; a pay stub for the applicant's spouse; a statement from [REDACTED], of Comprehensive Medical & Pain Services, New York City, dated January 2, 2009; copies of other medical records relating to the applicant's spouse; a statement of self-employment for the applicant's spouse, verifying that he drives a taxi-cab in New York City; a copy of a police report for an automobile accident involving the applicant's spouse; copies of birth certificates for the applicant's children; and a copy of the marriage certificate for the applicant and her spouse.

The entire record was reviewed and all relevant evidence considered in rendering this decision.

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 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-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) (“Mr. Arrieta 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’s qualifying relative, 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.

The AAO will first consider hardship upon relocation. The applicant’s spouse has submitted a statement indicating that he has resided in the United States for thirteen years. *Statement of the Applicant’s spouse*, June 13, 2008. Neither counsel for the applicant nor the applicant’s spouse articulate any other basis of impact if the applicant’s spouse were to relocate to Ghana to reside with the applicant.

Although the applicant’s spouse has resided in the United States for a significant period of time, having to relocate abroad after having resided in the United States is not considered an uncommon hardship factor.

There is insufficient evidence to establish that the applicants’ spouse would experience extreme hardship upon relocation abroad.

With regard to hardship upon separation, counsel for the applicant asserts the applicant’s spouse would experience physical, emotional and financial hardship if the applicant is denied admission.

*Statement in Support of Appeal*, received January 8, 2009. He explains that the applicant's spouse suffered injuries in an automobile accident in 2007 which impairs his ability to work. He further states that the applicant's spouse is forced to bear the financial and physical burden of raising three of their children, ages 19, 11 and 7, as of January 6, 2009 (they are 21, 13 and 9 as of the date of adjudication of this appeal), and that if the applicant were present she would be able to provide financial and child care support.

The applicant's spouse has submitted a letter detailing the injuries he suffered in 2007, and explaining that, due to the physical hardship of his injuries and the burden of caring for his children alone, he is unable to work a second job as he had previously done. He states that he is unable to afford child care and struggles to meet his monthly financial obligations. He further states that his children are emotionally impacted by the inability of the applicant to reside in the United States with them, and that he also misses the applicant.

An examination of the record reveals sufficient evidence to establish that the applicant's spouse was involved in a car accident in 2007. A statement from his doctor indicates that he injured his neck, back, chest and thumb in the accident, and that he still experiences pain related to the accident. *Statement of* [REDACTED], January 2, 2009. He explains that he has advised the applicant to maintain an exercise regimen and administer ibuprofrin when he experiences symptoms. The record also contains a copy of the police report related to the incident and the hospital records of his visit.

While the AAO acknowledges the evidence submitted to establish the applicant's spouse suffered injuries in an automobile accident, the evidence does not establish that the degree of impact on him rises to a level that constitutes a significant or uncommon hardship. There is no evidence that he experienced any broken bones or other life threatening injuries, or that he has any serious, continuing complications from the accident which impact his ability to function on a daily basis.

The AAO also notes that children are not qualifying relatives in this proceeding, and that, while it is common for children of an inadmissible alien to experience some emotional hardship due to separation, in this case there is nothing which indicates the hardship is such that it results in extreme hardship to the qualifying relative, the applicant's spouse. The AAO also observes that the applicants' oldest biological child is 21 years old and considered an adult under immigration law. It has not been established that, as a member of the household, he would be unable to assist the applicant's spouse in providing transportation or other physical support for the applicant's two other children.

In addition, the AAO notes that the applicant's three children recently immigrated to the United States after having resided in Ghana with the applicant. It has not been shown that they would be unable to return there, or that doing so would result in extreme hardship to them. Further, as discussed above, children are not qualifying relatives in this proceeding, and as such, any hardship to them is only relevant as it impacts a qualifying relative. In this case there is nothing in the record which indicates that the applicant's children will experience hardship which would indirectly result in extreme hardship to the applicant's spouse.

With regard to financial hardship, the record, although containing a confirmation that the applicant's spouse is self-employed as a taxi driver, does not provide evidence of other financial obligations, or show that the applicant's spouse is unable to meet his financial obligations based on his current income. As noted above, the applicant's oldest biological son is an adult. It has not been explained why he cannot provide income to help support himself or the family, as the applicant's spouse has indicated that he is currently residing in the home with his father and siblings, the applicant's spouse and two younger children.

The AAO also acknowledges the sentiment of the applicant's spouse with regard to the emotional impact of separation, but the record does not contain any documentary evidence which establishes that he is experiencing any emotional hardship which rises above the common hardship experienced by the relatives of inadmissible aliens such that it constitutes extreme hardship.

Even when the hardship factors asserted in this case are examined in the aggregate, there is insufficient evidence to establish that they constitute extreme hardship.

U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. 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 upon the applicant to establish that he is eligible for the benefit sought. After a careful review of the record, it is concluded that the applicant has failed to establish that a qualifying relative will suffer extreme hardship. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.