

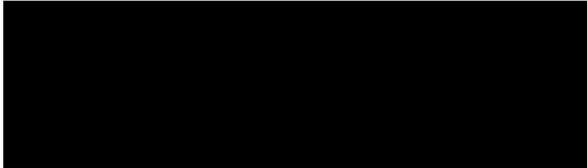
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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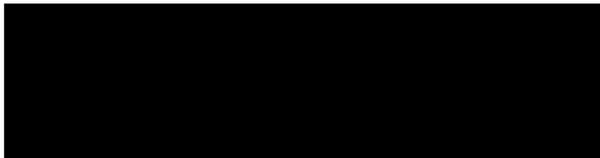
OFFICE: ACCRA, GHANA

FILE: 

IN RE: 

APPLICATION: Immigrant Application for Waiver of Grounds of Inadmissibility pursuant to 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is again before the AAO on a motion to reopen or reconsider. The motion will be granted. The AAO will withdraw the prior decision and the waiver application will be approved.

The applicant is a native and citizen of Ghana who was found to be inadmissible to the United States under 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 to enter the United States by fraud or willful misrepresentation. The applicant is the son of a lawful permanent resident. He 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.

The Field Office Director found that the applicant had failed to establish that the bar to his admission would result in extreme hardship to a qualifying relative. He denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Decision of the Field Office Director*, dated February 19, 2010. On appeal, the AAO determined that the record failed to establish the applicant's blood relationship to the individual he indicated was his mother and, therefore, that he was eligible to apply for a section 212(i) waiver of inadmissibility. *Decision of the AAO Chief*, dated September 9, 2010.

On motion, counsel submits a birth certificate for the applicant that establishes he is the son of a lawful permanent resident. Accordingly, the AAO finds that he is eligible for waiver consideration under section 212(i) of the Act and will now consider whether the record establishes that the applicant's mother would suffer extreme hardship as a result of his inadmissibility.

In support of the waiver application, the record now contains birth certificates for the applicant and one of his brothers; statements from the applicant's brothers; and copies of court documents relating to the applicant's conviction for forgery and possession of forged documents. The record also includes the following previously submitted evidence: counsel's briefs, statements from the applicant, his mother and brother; medical documentation relating to the applicant's mother; evidence of the applicant's enrollment in the University of Abuja (Nigeria); online articles on conditions in Ghana; a copy of Country Specific Information – Ghana, issued by the U.S. Department of State on September 23, 2008; a January 27, 2009 report on crime and safety in Ghana published by the Overseas Security Council; and a court record relating to the applicant's conviction for an unspecified crime.

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.

As indicated in the AAO's decision of September 9, 2010, the record reflects that, in 2004, the applicant submitted a fraudulent Western Africa Education Certificate (WAEC) in support of his Diversity Visa application. As the applicant submitted a fraudulent document in order to qualify for a Diversity Visa, he is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having sought a benefit under the Act through fraud or the willful misrepresentation of a material fact.¹

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 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 can be considered only insofar as it results in hardship to a qualifying relative. The applicant's mother 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 United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 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

¹ The applicant has submitted Ghanaian police and court records that indicate he pled guilty to charges of Forgery of Document and Possessing Forged Document on February 20, 2004. Accordingly, he also appears inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude. Forgery is a crime involving moral turpitude. *Matter of Seda*, 17 I&N Dec. 550 (BIA 1950). While the record contains insufficient evidence to determine whether or not the applicant's crime is subject to the petty offense exception found in section 212(a)(2)(A)(ii)(II) of the Act, we find that such a determination is unnecessary as the applicant's eligibility for a waiver under section 212(i) will also waive any ineligibility he may have under section 212(a)(2)(A)(i)(I) of the Act.

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 (BIA) 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 BIA 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 BIA 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 BIA 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 BIA 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 BIA 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, 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 now turns to the question of whether the applicant in the present case has established that his lawful permanent resident mother would experience extreme hardship as a result of his inadmissibility.

In a brief filed with the applicant's appeal, counsel asserts that the applicant's mother is an octogenarian who is legally blind and has high blood pressure. The applicant's mother, in an undated statement, makes these same claims. She states that she is legally blind and has high blood pressure, and suffers from pain throughout her body. She also asserts that she would not be able to afford to live in Ghana as the cost of living there is at an all time high and she has no income. She states that she cannot depend on the applicant to earn enough of a living to support her as he is a student and does not yet have a university degree, and jobs are scarce. She also asserts that the crime rate in Ghana is appalling and that if she returns to Ghana, she will be alone since the applicant is in Nigeria attending school.

In support of these claims, the record contains a handwritten note from Dr. [REDACTED], dated February 3, 2009, indicating that he saw the applicant's mother for a preoperative evaluation prior to surgery for glaucoma. The record also includes a February 16, 2009 statement from [REDACTED] of [REDACTED] LLC indicating that the applicant's mother was seen on December 13, 2008 for coughing, fever, chills and a sore throat, and again on January 3, 2009 when she was found to have nasal congestion, coughing and an itchy eye. A January 31, 2009 printout of the applicant's mother prescription record is also included in the record and establishes that she has been prescribed Azithromycin, Combigan eye drops, and Vigamox eye drops. A second prescription printout, dated January 3, 2009, reflects that she has taken Amlodipine, Amoxicillin and Lisinopril. Based on this evidence, the AAO finds the record to establish that the applicant's mother suffers from glaucoma and high blood pressure, but not that she is legally blind.

The record also includes the Ghana 2009 Crime & Safety Report, dated January 27, 2009, issued by the Overseas Security Advisory Council, Bureau of Diplomatic Security, U.S. Department of State, as well as the Department of State's Country Specific Information report on Ghana, dated September 23, 2008. The State Department's report on crime and safety indicates that various types of crime, including home invasions and robberies, are common in Ghana and that the level of crime in the capital of Accra is similar to that of inner city crime throughout the United States. The Country Specific Information report also indicates that crime is common in Ghana and that incidents of violent crime are on the rise. It further reports that medical facilities in Ghana are limited, particularly outside Accra. Also found in the record are an online article from ghanaweb.com on the growth of crime across Ghana and a February 24, 2009 Forbes.com report on Ghanaian inflation.

The AAO does not find the record to contain sufficient evidence to establish that the applicant's mother would experience financial hardship or that her security would be at risk if she relocated to Ghana to be with the applicant. General economic or country conditions in an alien's native country

do not establish extreme hardship in the absence of evidence that the conditions would specifically affect the qualifying relative. *Kuciemba v. INS*, 92 F.3d 496 (7th Cir. 1996) (citing *Marquez-Medina v. INS*, 765 F.2d 673, 676 (7th Cir. 1985)). However, we do note the applicant's mother's age of 80 years; her medical conditions, including glaucoma and high blood pressure; and the fact that medical facilities in Ghana are limited. When these specific hardship factors and the hardships normally created by relocation, including the separation of the applicant's mother from her family in the United States, are considered in the aggregate, the AAO finds the applicant to have established that his mother would experience extreme hardship if she relocates to Ghana.

To establish that the applicant's mother would also suffer extreme hardship if she remains in the United States, counsel points to the physical toll that traveling back and forth to Africa to visit the applicant is taking on her health and the financial hardship that this travel imposes. In her own statement, the applicant's mother also asserts that the 15-hour trip to Africa is negatively affecting her already fragile health. She contends that her health can no longer take "the beating" that comes with international flights but that as long as the applicant remains in Ghana, she is forced to travel back and forth. The applicant's mother further states that her children in the United States pay for her travel, as well as that of a traveling companion since she is legally blind. Her travel, the applicant's mother states, is taking away income that her children could use for their own families.

In an undated statement, one of the applicant's brothers states that his mother is suffering immensely from the continued denial of the applicant's visa. He asserts that she is old and that while "many things no longer have any value to her," her family is the most important thing. The applicant's brother states that if the applicant were in the United States, his mother would, perhaps, be at peace.

The AAO acknowledges that the applicant's mother is suffering emotionally as a result of her continued separation from the applicant and that her advanced age and health make the international travel required to see him problematic. Accordingly, we have considered the emotional suffering that would be created by the permanent separation of mother and son in light of the applicant's mother's age and her multiple health problems. We find the unique factors of this case, when viewed in the aggregate, demonstrate that the applicant's mother would suffer extreme hardship if she continues to reside in the United States without the applicant.

In that the applicant has demonstrated that his mother would experience extreme hardship as a result of his section 212(a)(6)(C)(i) inadmissibility, he has established statutory eligibility for relief under section 212(i) of the Act.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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 Mendez-Morales, 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 applying for a Diversity Visa in 2004 and his criminal conviction relating to this same misrepresentation. The mitigating factors are the applicant's lawful permanent resident mother, and his lawful permanent resident and U.S. citizen brothers; the extreme hardship to his mother if the waiver application were to be denied; and his statement accepting responsibility and expressing regret for his misrepresentation.

The AAO finds that the misrepresentation committed by the applicant was serious in nature and 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.

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 AAO will withdraw our prior decision and the application will be approved.

ORDER: The prior decision of the AAO is withdrawn and the application is approved.