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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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HS

DATE: Office: ACCRA, GHANA FILE: [redacted]

**MAY 13 2011**

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) of the Immigration and Nationality Act (the Act), 8 U.S.C. section 1182(a)(9)(B)(v), and Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i).

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Ghana. He was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having been unlawfully present in the United States for one year or more and seeking admission within ten years of his last departure, and concealing his prior overstay and unlawful presence in the United States when applying for a B visa. He is married to a United States citizen. He seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i).

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on November 25, 2008.

On appeal, the applicant states that the Field Office Director erred when he denied the waiver application because he has established that his spouse and son will suffer extreme hardship if he is not allowed into the United States. *Form I-290B*, received on December 23, 2008.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

The record indicates that the applicant entered the United States with a B2 visa on September 27, 2001, and remained beyond his authorized stay until he departed on or about September 13, 2004. As the applicant has resided unlawfully in the United States for over one year and is now seeking admission within ten years of his last departure from the United State he is inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

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.

Section 212(a)(6)(C)(iii) authorizes a waiver, in the discretion of the Attorney General, as provided by Section 212(i):

- (1) The Attorney General may, in the discretion of the Attorney General, waive the application of clause (i) of subsection (a)(6)(C) of this section 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 Attorney General 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 . . . .

The record indicates that the applicant married his spouse [REDACTED] 5. On May 23, 2007, his spouse filed a Form I-130, which was approved on October 11, 2007. On September 11, 2005, the applicant attempted to enter the United States using a B-1/2 nonimmigrant visa. Upon inspection he admitted that he had failed to disclose his previous period of unlawful presence on the visa application and that he obtained a fraudulent Ghanaian entry stamp to conceal his lengthy overstay in the United States. As such, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act.

The applicant's waiver application will be examined under section 212(i) of the Act, as any waiver granted under that provision would also establish eligibility for a waiver under section 212(a)(9)(B)(v) of the Act.

The record includes, but is not limited to, a statement from the applicant; copies of lab reports from a London hospital on the applicant's spouse; copies of a sonogram and radiology report on the applicant's spouse from a London hospital; a copy of a pharmacy technician certificate for the applicant's spouse; a brief from former counsel for the applicant; a statement from the applicant's spouse; a copy of a medical record diagnosing the applicant's son with Cirrhosis; statements from [REDACTED]; a copy of a lab report for the applicant's son; country conditions materials on Ghana, including materials from the World Health Organization, a study from the Christian Health

Associations of Ghana and a copy of the U.S. State Department's Country Report on Human Rights Practices, Ghana; tax records for the applicant's spouse; and a criminal records check for the applicant.

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

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 child can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife 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 a 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 examine the hardships upon relocation. Prior counsel for the applicant and the applicant assert that the primary hardship upon relocation is that the applicant’s son needs medical care that is only available in the United States because he has been diagnosed with Cirrhosis – Primary Billiary. *Statement of the Applicant on Appeal*, dated December 22, 2008; *Argument in Support of Applicant’s I-601 and I-212 Waiver*, August 1, 2008.

The AAO notes that the applicant’s child is not a qualifying relative in this proceeding. As such, any impact on the applicant’s son is only relevant as it impacts the qualifying relative, in this case the applicant’s spouse. The AAO acknowledges the fact that Dr. [REDACTED] has diagnosed the applicant’s son with Cirrhosis and that he had been placed on the liver transplant list. *Statement of Dr. Udeme Ekong*, dated October 3, 2005; *Hepatology and Liver Transplant*, Children’s Memorial Hospital. There is also a statement from [REDACTED] dated December 11, 2005, indicating that they wished to test the applicant to see if he would be a compatible as a living donor for his son. However, subsequent medical records indicate that the applicant is not a compatible donor for his son. *Statement of the Applicant*, date December 22, 2008. The record also includes some country conditions materials, including a report from the Christian Health Associations of Ghana, in order to

support the applicant's assertion that the hospitals in Ghana are not of the same quality as those in the United States. While the evidence indicates that health care in Ghana is not at the same level of quality as the United States, the applicant has not shown that his son would lack required care in Ghana. To establish a hardship on this basis there should be evidence that required medical treatments would not be available to such a degree that it would pose a medical hardship.

In this case, although there may be some difference in quality of available health care, there is no indication that the applicant's son would not have access to adequate health care in Ghana, or that he would not be able to receive a liver transplant if necessary. As it stands now, the record does not contain any updated medical documentation or information on the applicant's son. Recent hospital records indicate the applicant's son may still have liver disease, but do not indicate the presence of any imminent threat of death, the need for a liver transplant or any other serious medical impacts. [REDACTED], August 4, 2008. The record does not indicate that the medical condition of the applicant's son will result in an extreme hardship to the applicant's spouse if she were to relocate to Ghana with the applicant.

The applicant states that his spouse suffered from an ectopic pregnancy and was operated on in a London hospital. The record does include medical documents supporting that she had an ectopic pregnancy, but the evidence does not indicate any lingering impacts on her related to this condition and it is unclear how this would result in a hardship to her upon relocation to Ghana.

The applicant asserts that his spouse has been unable to find employment in Ghana. The record does not contain any other objective evidence that the applicant and his spouse were unable to meet their financial obligations in Ghana. The applicant has also stated that he inherited a business and other holdings from his parents, indicating that he has a source of income in Ghana. There is insufficient evidence to establish that his spouse would experience any financial hardship upon relocation to Ghana. The AAO also observes that the applicant's spouse is a native of Ghana and has resided both in Ghana and the United States since she naturalized in 2007, further mitigating any acculturation impacts if she were to relocate.

Even when examined in aggregate, the record does not indicate that the applicant's spouse would experience uncommon hardships rising to the level of extreme hardship upon relocation to Ghana.

With regard to hardship upon separation, the applicant asserts that the International Convention on the Right of the Child requires the United States to approve his application so that he can reside with his child and spouse in the United States. While the United States is a signatory to this convention, the United States has not precluded the applicant's child from residing with him, it has merely held that the applicant is not eligible to reside in the United States due to violations of U.S. immigration law.

The applicant has explained that he had to receive medical treatment for a herniated disc and was operated on while residing in Ghana. While evidence in the record indicates the applicant may have received such medical treatment and that his spouse may have cared for him during his rehabilitation,

it is not clear how the applicant's spouse would experience any current hardship related to this. The AAO notes that hardship to the applicant is only relevant to the extent that it impacts a qualifying relative, and in this case any impact to the applicant's spouse due to the applicant's prior back surgery has not been established.

The applicant's spouse has submitted a letter detailing the hardship of being a single mother while her newborn child was diagnosed with liver disease. She explains that, without the applicant's presence, she was not able to work and had to abandon her pharmacist certification in order to care for her newborn son. She states that due to the financial impact of the applicant's departure and the medical condition of her son she was forced to return to Ghana. She asserts that she has repeatedly been told that her son needs to return to the United States for effective treatment of his liver disease. She further states that, while in Ghana, the applicant and her son have been moving from hospital to hospital in order to find treatment for their son, incurring large medical bills. *Affidavit of* August 6, 2008.

An examination of the record reveals sufficient evidence to establish that the applicant's son was initially diagnosed with liver disease, and that, immediately after his birth, physicians determined that he needed a liver transplant. However, more recent medical evidence, while indicating the presence of liver disease, does not indicate the severity of his condition, nor does it state that he needs to return to the United States in order to receive treatment. *Medical Report*, August 4, 2008.

The record does not contain any medical evidence which indicates the applicant's son must return to the United States to receive treatment. The evidence in the record indicates that the applicant's son was residing in Ghana as of August 2008, and that the applicant's spouse has returned to the United States, listing an address on December 22, 2008. There is insufficient evidence in the record to establish that the applicant's spouse was unable to meet her financial obligations, either during her recovery period after the birth of her son or during the periods she has been living in the United States. There is insufficient evidence in the record to establish why, since the applicant's son appears to be residing in Ghana, the applicant's spouse would be unable to work or meet her own financial needs while she resides in the United States.

Even when examined in aggregate, there is insufficient evidence in the record to establish that the impacts on the applicant's spouse rise above the common impacts experienced by relatives of inadmissible aliens. As such, the record fails to establish that a qualifying relative will experience extreme hardship upon separation. 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. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen spouse as required under section 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.