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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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**U.S. Citizenship
and Immigration
Services**

H5

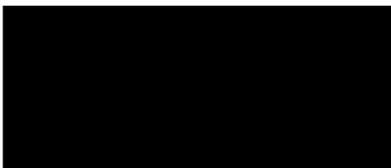


Date: **NOV 23 2011** Office: BOSTON, MA FILE:

IN RE: Applicant:

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 must 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 District Director, Boston, Massachusetts. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted and the previous decisions of the District Director and the AAO will be affirmed.

The applicant is a native and citizen of Ghana who entered the United States on April 21, 1999, by presenting the Canadian immigration documents of his brother. On November 18, 2005, the applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601). On June 9, 2006, the District Director denied the applicant's Form I-601, finding the applicant had entered the United States by fraud or the willful misrepresentation of a material fact and had failed to demonstrate extreme hardship to a qualifying relative. *Decision of the District Director*, dated June 9, 2006. On July 11, 2006, the applicant, through counsel, filed an appeal of the District Director's decision with the AAO. On July 1, 2009, the AAO dismissed the applicant's appeal. On July 31, 2009, the applicant, through counsel, filed a motion to reopen and reconsider the AAO's decision

In its July 1, 2009 decision, the AAO found that the applicant had failed to demonstrate extreme hardship to a qualifying relative under section 212(i) of the Act. Although the AAO noted that the applicant had established that his United States citizen wife would experience extreme hardship if she relocated to Ghana, it also observed that the applicant had failed to address how his spouse would be affected if she remained in the United States without him. On motion, the applicant, through counsel, asserts that his wife will suffer extreme hardship if she remains in the United States and submits evidence in support of his claim. According to the regulation at 8 C.F.R. § 103.5(a)(2), a motion to reopen must state new facts to be proved and be supported by affidavits or other documentary evidence. A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The record in support of the applicant's motion includes, but is not limited to, counsel's brief in support of the motion to reopen, medical documents for the applicant's wife, and a special education evaluation for the applicant's wife. The entire record was reviewed and all relevant evidence considered in rendering this decision.

As the applicant, through counsel, has submitted new documentary evidence to support his claim, the motion to reopen will be granted.

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

- (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 Act is inadmissible.
- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

Section 212 of the Act provides, in pertinent part, that:

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

In the present case, the record indicates that on April 21, 1999, the applicant entered the United States by presenting the Canadian immigration documents of his brother. Based on this misrepresentation, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act. The AAO notes that counsel does not dispute this finding.

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 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 United States Citizenship and Immigration Service (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 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 of Immigration Appeals (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.

In counsel’s brief in support of the motion to reopen dated July 30, 2009, counsel states that the applicant’s wife “suffers from significant psychological and physical problems, including Bipolar Disorder, Mood Disorder, Anxiety Disorder and other diagnosed mental disorders.” Counsel also states that the applicant’s wife “suffers from physical ailments such as asthma, low back pain, tinea pedis and has a history of hemorrhoids and genital warts.” The AAO notes that medical documentation in the record establishes that the applicant’s wife suffers from “anxiety disorder, mood disorder, low back pain, tinea pedis and external bleeding hemorrhoids.” *See facility letter from* [REDACTED] dated July 28, 2009. The AAO also notes that the record establishes that the applicant’s wife was diagnosed with ADHD in 1999, and she has a history of hemorrhoids and genital warts. Counsel claims that “[o]nly with ample medication, psychological evaluations, regular doctor visits, and the loving support of [the applicant] and her immediate family is she able to maintain a normal life.” [REDACTED] reports that the applicant’s wife’s “anxiety and mood symptoms were under fair control” on medication; however, the applicant’s wife was “not currently receiving counseling or psychologic therapy.” Counsel states that if the applicant returns to Ghana, it would “surely cause a relapse in [the applicant’s wife’s] health

problems.” The AAO acknowledges that the applicant’s wife may suffer some emotional problems in being separated from the applicant. However, the AAO notes that while it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished his wife’s emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Additionally, the record does not establish through documentary evidence that the applicant’s wife requires the assistance of the applicant because of her medical/mental health conditions. The letter from [REDACTED], while noting the applicant’s wife’s medical conditions, does not describe the severity of these conditions or suggest that these conditions would worsen in the applicant’s absence. Nor is there any evidence to suggest that the applicant’s spouse would be unable to receive necessary medical treatment in the applicant’s absence. Further, the AAO notes that counsel indicates that the applicant’s wife also receives support from “her immediate family.” However, the AAO notes the applicant’s wife’s concerns.

Counsel states that the applicant “financially supports” his wife. The AAO finds the record to include some documentation of the applicant and his wife’s income and expenses; however, this material offers insufficient proof that the applicant’s wife will be unable to support herself in the applicant’s absence. Additionally, the applicant has not distinguished his wife’s financial challenges from those commonly experienced when a family member remains in the United States alone. Further, the AAO notes that the applicant has not established that he would be unable to obtain employment in Ghana and, thereby, financially assist his wife from outside the United States. Based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if his waiver application is denied and she remains in the United States.

Although the applicant has demonstrated that the qualifying relative would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige, supra* at 886. Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id., also cf. Matter of Pilch, supra* at 632-33. As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C)(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 not met that burden. Accordingly, the AAO’s dismissal of the appeal is upheld and the underlying waiver application is denied.

ORDER: The motion is granted and the previous decisions of the District Director and the AAO are affirmed. The application is denied.