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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**

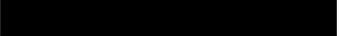


H5

Date: **OCT 19 2011**

Office: ACCRA, GHANA

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:

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 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 Field Office Director, Accra, Ghana, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Ghana who 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), for attempting to procure admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a United States citizen and the father of two United States citizen children and one Ghanaian citizen child. He is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant 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 with his spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated November 25, 2008.

On appeal, the applicant claims his family needs him. *See statement from the applicant*, undated.

The record includes, but is not limited to, statements from the applicant and his wife, letters of support for the applicant and his wife, statements from Dr. [REDACTED] regarding the applicant's wife's medical conditions, and tax documents for the applicant's wife. The entire record was reviewed and considered in arriving at a decision on the appeal.

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.
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- (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 October 25, 2005, the applicant presented fraudulent bank statements in support of his nonimmigrant visa application.

The applicant states "that the accusation against [him] that [he] presented an unauthentic bank statement is completely and absolutely false." He claims that it was a "case of mistaken identity where another customer bears [his] name" or it may be "a case of account swapping." The applicant states that he has "been wrongly accused of something [he] [is] not guilty of."

The AAO finds the applicant's contention that he is not inadmissible to the United States through the misrepresentation of a material fact to be unpersuasive. The AAO observes that in waiver proceedings the burden of proof is on the applicant to establish admissibility. See section 291 of the Act, 8 U.S.C. § 1361. The AAO notes that the record establishes that on October 21, 2005, the applicant presented bank statements in support of his nonimmigrant visa application which appeared to be fraudulent. On October 25, 2005, the bank statements were verified to be fraudulent. Even though the applicant claims the bank statements are not his and it is a "case of mistaken identity," the AAO notes that the record shows that the applicant presented the bank statements as his own and that he has submitted no documentary evidence establishing that he did not present these bank statements in order to obtain an immigration benefit. Further, the applicant has not provided any evidence to support his claim of "mistaken identity." Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Accordingly, the AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) for willfully misrepresenting a material fact in order to seek admission into the United States.

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 children 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 United States Citizenship and Immigration Service (USCIS) then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 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 an undated statement, the applicant's wife states it would be difficult "to allow [her] children to join [the applicant] in Ghana, not to mention the poor health treatment and financial consequences which will be an additional dilemma of impoverishing and displacing [her] children's future." Additionally, she

states that moving her children to Ghana would disrupt their "routine monthly check-ups to their doctor." The AAO notes the applicant's wife's concerns.

The AAO acknowledges the claims made regarding the difficulties the applicant's wife would face in returning to Ghana. The AAO notes that the applicant's wife has been residing in the United States for many years. However, the AAO observes that the applicant's wife is a native of Ghana and the record does not establish that she does not speak useful languages or that she has no family ties to Ghana. Additionally, the AAO notes that no country conditions materials or documentation has been submitted to establish that the applicant's wife would be unable to obtain employment in Ghana. Further, other than the applicant's wife's claims, the AAO notes that the record does not include supporting documentary evidence that the applicant's children cannot receive appropriate medical treatment for any medical conditions that may arise. Therefore, based on the record before it, the AAO finds that the applicant has failed to establish that his wife would suffer extreme hardship if she relocated to Ghana.

Regarding the hardship the applicant's wife would suffer if she were to remain in the United States, the applicant states his family needs him and out of "necessity," he needs to be with them. In a statement dated December 19, 2008, Ms. [REDACTED] the applicant's wife's co-worker, states the applicant's wife is "emotionally drained." The applicant's wife states that she is "physically and mentally exhausted." She claims she has been "diagnosed with stress, anxiety manifesting in insomnia, poor appetite, difficulty in focusing and concentrating, cry spells and loss of sexual libido." In a statement dated February 3, 2009, Dr. [REDACTED] states she is treating the applicant's wife for hypertension and asthma. Dr. [REDACTED] states the applicant's wife's "medical conditions are aggravated by stress," and reports that the applicant's wife's stress is caused by the separation from the applicant. In a statement dated July 7, 2008, Dr. [REDACTED] stated that the applicant's wife was suffering from anxiety. The AAO notes that in Dr. [REDACTED] updated statement, she did not indicate that the applicant's wife was suffering from anxiety. However, the AAO notes the applicant's wife's medical issues and acknowledges that she is experiencing emotional issues because of the separation from the applicant.

The applicant's wife states being a single mother "is taking a psychological and unhealthy effect" on her. In a statement dated December 17, 2008, Ms. [REDACTED] the applicant's children's babysitter, states the applicant's wife is stressed and she angers easily. The applicant's wife states her sons "are always asking" for the applicant, they are sad, and raising them without the applicant is causing her "mental agony." She states her children need the applicant "in their lives especially during their formative years." She claims that it is "unbearable and burdensome for [her] in educating, feeding, [and] cooking for the kids." She also claims that "[t]he struggle to keep [her] job and also work extra," is putting her children "at risk without adequate care." In a statement dated August 5, 2008, Ms. [REDACTED] the applicant's co-worker, states the applicant's wife is "having difficulty with child care." The AAO notes the applicant's wife's concerns for her children.

The applicant's wife states she is having financial problems. In an undated statement, the applicant's wife states she travels to Ghana once a year; however, it is expensive. She states she is now working the night shift "which is taking a very harsh toll on [her] health." Ms. [REDACTED] states the applicant's wife works the night shift and she normally gets to work late. Ms. [REDACTED] states it is "very hard [for the

applicant's wife] to continue in her capacity of a Cancer Care Technician." Ms. [REDACTED] states "[i]t has become difficult for [the applicant's wife] to come to work and have peace of mind while caring for others." While the AAO notes the applicant's wife's claims of financial hardship, it does not find the record to support them. The AAO finds the record to include some documentation of the applicant's wife's income; however, this material offers insufficient proof that she is unable to support herself in the applicant's absence. Additionally, the AAO notes that the applicant has submitted no evidence to establish that he is unable to obtain employment in Ghana and, thereby, reduce the financial burden on his wife.

However, the AAO finds that when the applicant's wife's emotional, childcare, medical and employment issues are considered in combination with the normal hardships that result from the exclusion of a loved one, the applicant has established that his wife would experience extreme hardship if she remained in the United States.

Although the applicant has demonstrated that the qualifying relative(s) would experience extreme hardship if separated from the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. 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 remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. *See Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, *see also Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative(s) 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 appeal will be dismissed.

ORDER: The appeal is dismissed.