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

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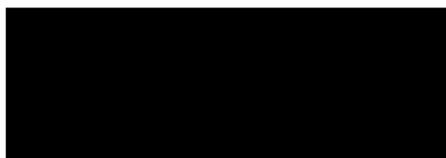
DATE: APR 04 2012 OFFICE: ALBANY, NY

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

The applicant is a native and citizen of Ghana who has resided in the United States since July 18, 1998 when he used a passport and nonimmigrant visa which did not belong to him to gain admission into the United States. He 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 procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. Citizen spouse and child.

The Field Office Director concluded that the applicant failed to establish his spouse would experience extreme hardship given the applicant's inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated September 10, 2007.

On appeal, counsel for the applicant submits a brief. Therein, counsel discusses the applicant's immigration and criminal history, which includes removal proceedings, which were terminated, and multiple convictions for driving under the influence of alcohol. Counsel asserts that the applicant has shown his spouse would experience extreme hardship, given the country conditions in Ghana, the spouse's family ties in the United States, their U.S. born daughter, financial difficulties, and lack of adequate medical care in Ghana.

The record includes, but is not limited to, evidence of birth, marriage, residence, and citizenship, statements from the applicant and his spouse, letters from family and friends, records of criminal and immigration proceedings, financial documents, articles on country conditions in Ghana, other applications and petitions filed on behalf of the applicant, and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (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.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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

[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 reflects that the applicant used a passport and nonimmigrant visa belonging to [REDACTED] to gain admission into the United States. Inadmissibility is not contested on appeal. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to the United States through fraud or misrepresentation. The applicant's qualifying relative for a waiver of this inadmissibility is his U.S. Citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 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.

The applicant’s spouse contends she would be emotionally unable to handle a separation from the applicant if he were to return to Ghana, as she loves him and relies on him. Furthermore, the spouse indicates that she would not be able to maintain their current lifestyle without his income, she would be unable to afford the airfare to visit him in Ghana, and she would have to decide between paying for airfare to Ghana and financing her education. Monthly budgets on expenses in New York and in Ghana are submitted in support, as is evidence on airfare costs. The spouse adds that she needs her husband to have children, and given separation from him she would have to give up this dream.¹

The applicant’s spouse asserts she cannot imagine leaving New York, where she has lived her entire life, to move to Ghana, where everyone is black and there is potential for many things to go wrong. She explains she would be a foreigner there and her interracial marriage might make her an outcast. She states that she fears she will be subject to terrible crime, that she might contract AIDS, would be unable to afford good medical care, and that she and the applicant would be unable to find employment in Ghana. The applicant’s spouse indicates her family would be unable to visit for financial reasons, which would impact her emotional well-being because she is close to her family. The spouse adds that she is currently studying for the New York State teacher’s exam and plans to obtain a master’s degree in Special Education.

¹ It is noted that the applicant’s spouse’s statement was made before the birth of their daughter in 2007.

Counsel moreover indicates that the applicant's spouse gave birth to a girl in 2007, and that the spouse would be subject to additional hardships because she might suffer allegations of witchcraft, and the child may be subject to female genital mutilation (FGM). Counsel emphasizes that both the applicant and the bi-racial child would have significant difficulties including psychological hardships due to their racial differences in Ghana. Counsel adds that health conditions and access to medical care in Ghana generally would cause a hardship to the applicant's spouse. Articles on country conditions were submitted in support of counsel and the spouse's assertions.

Despite submission of monthly budget worksheets and some evidence on past income, the record does not contain sufficient supporting evidence of the spouse's or the applicant's household expenses to support assertions of financial hardship, nor is there any evidence to support an assertion that the applicant's spouse would have to give up on her educational advancement given the applicant's inadmissibility. The applicant further fails to provide any evidence regarding his current employment and earnings. Without sufficient details and supporting evidence of the family's expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's spouse will face.

The applicant's spouse indicates that she depends on the applicant emotionally and she would need a father figure present for children. While the AAO acknowledges that the applicant's spouse would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that her hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, emotional or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that she would suffer extreme hardship if the waiver application is denied and the applicant returns to Ghana without his spouse.

Counsel contends the daughter may be subject to FGM, which would create a significant hardship on the applicant's spouse. The record indicates the applicant was born in Takoradi, Ghana, which is located on the southern coast of Ghana, and that he lived in Takoradi for over 20 years. Evidence of record shows that FGM and accusations of witchcraft are not prevalent in the southern coast of Ghana. The U.S. Department of State indicates in a Human Rights Report: "The law prohibits FGM, but it remained a serious problem in the Upper West Region of the country, and to a lesser extent in Upper East and Northern regions." *Human Rights Report: Ghana, U.S. Department of State* April 8, 2011. The State Department adds that accusations of witchcraft and related punishments are also concentrated in those same areas. No other evidence of record demonstrates that the applicant's spouse would be specifically targeted.

Counsel has submitted evidence on the ethnic and racial populations of Ghana and New York, and has asserted that because of the applicant's Caucasian background and the daughter's bi-racial background they will be subject to physical harm and accusations of witchcraft. The documentation counsel cites as support, the U.S. Department of State Human Rights Report, does not in fact support those assertions. The applicant's contentions, such as her statements on physical abuse and being unable to find employment despite her background in education, are

similarly unsupported by the record. Although her assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). Similarly, without supporting evidence, the assertions of counsel will not satisfy the applicant’s burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaigbena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Furthermore, although the record reflects that medical facilities in Ghana may be inferior to those in the United States, there is no indication that the applicant’s spouse has any significant medical conditions requiring treatment which is unavailable in Ghana.

The AAO acknowledges that relocating to Ghana will entail separation from the spouse’s community and family in New York, as well as adjusting to an unfamiliar country. However, given the evidence of record, the AAO cannot find evidence of record to demonstrate that her hardship would rise above the distress normally created when families relocate as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, emotional, familial, or other impacts of relocation on the applicant’s spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot find that she would suffer extreme hardship if the waiver application is denied and the applicant’s spouse relocates to Ghana with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. Citizen spouse as required under section 212(i) of the Act.

Furthermore, the AAO finds even if the applicant established that his spouse would face extreme hardship given his inadmissibility, the applicant has failed to show he merits a favorable exercise of discretion. The record shows that not only did he use his half-brother’s passport and nonimmigrant visa in 1999 to obtain admission into the United States, but also that he used the identity of [REDACTED] in his criminal proceedings as well as with immigration officials. For instance, when questioned by immigration officials in 2002, he maintained his true name was [REDACTED] until confronted with information obtained from his then-girlfriend. He also asserted that he entered the United States in 1995 with a passport in the name of [REDACTED]. In addition to his false identities, the applicant has convictions in 2000, 2001, and 2003 related to driving under the influence of alcohol.

The applicant’s record therefore shows a pattern of dishonesty but also one of a continuous disregard for state law. As such, the applicant has failed to show that his spouse would experience

extreme hardship given his inadmissibility, and that he does not merit a favorable exercise of discretion even if extreme hardship were found.

In proceedings for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.