

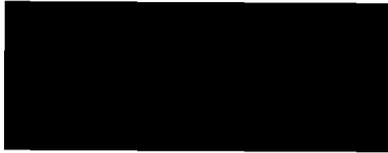
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
20 Massachusetts Ave. NW MS 2090  
Washington, DC 20529-2090

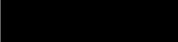


U.S. Citizenship  
and Immigration  
Services



H5

DATE: APR 27 2012 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:



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 applicant is a native and citizen of Ghana who used another identity to present herself as the spouse of a diversity visa applicant to immigration officials, when in fact she was not married to him. She 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 procure a visa fraud or misrepresentation. The applicant is the daughter of U.S. Citizen parents and is the beneficiary of an approved Form I-130 Petition for Alien Relative filed by her U.S. Citizen step-father. 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 her U.S. Citizen parents.

The Field Office Director concluded that the applicant failed to establish extreme hardship to her qualifying relatives and denied the application accordingly. *See Decision of Field Office Director* dated December 9, 2009.

On appeal, counsel for the applicant contends that her parents cannot continue to financially support the applicant in Ghana given their expenses, nor would they be able to earn an adequate income if they relocated to Ghana. Counsel adds that the separation takes an emotional toll on the applicant's mother, but if the mother relocated to Ghana, she would be unable to pay for her hypertension medication, and both parents would have to forgo educational opportunities available in the United States.

The record includes, but is not limited to, evidence of birth, marriage, divorce, residence, and citizenship, financial documents, statements from the applicant's parents, medical records, other applications and petitions filed on behalf of the applicant, and articles on country conditions in Ghana. 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 falsely represented to immigration officials that her name was [REDACTED] and that she was married to a diversity visa lottery recipient, [REDACTED] in order to obtain an immigrant visa. Inadmissibility is not contested on appeal. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure a visa to the United States through fraud or misrepresentation. The applicant's qualifying relatives are her U.S. Citizen parents.

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.

Counsel contends that the applicant’s parents are unable to continue to financially support the applicant in Ghana given their income and expenses. Evidence of income is present in the file, as is a monthly expenses worksheet and evidence on expenses including remittances to the applicant and other family members. The applicant’s parents indicate that there is nothing left after the bills are paid, despite the fact that both parents work approximately 80 hours a week. Counsel asserts that the applicant’s \$200 monthly remittance has now increased because she now lives by herself, and not with her relatives. The parents add that they have given up on their dreams of becoming a medicine aide and a pharmacist given the financial strain as well as emotional difficulties due to the present separation. A letter from a clinical psychologist indicates that the parents have developed psychological symptoms of anxiety and depressed mood, affecting their quality of life.

With respect to relocation, the financial planner asserts that the parents would be unable to find adequate employment in Ghana given the poor state of the economy. Counsel adds that even if they found employment, they would be unable to afford food, shelter, or medicine, including the mother’s hypertension medication. A letter from a physician confirms that the mother has hypertension, and has been taking Lotrel 5/20 mg tablets daily. Counsel submits an article to show that the unaffordability of hypertension medication in Ghana is the major cause of non-compliance with prescriptions. Counsel adds that the applicant’s step-father would have to be separated from his son, who lives in New Jersey, upon relocation.

Despite submission of evidence on income and expenses, the record does not support assertions of financial hardship. The evidence shows that the parents were projected to earn an adjusted gross income of \$ [REDACTED] in 2007, and that the expenses as delineated in the expense worksheet do not exceed that income. Furthermore, [REDACTED] far exceeds 125% of the minimum income requirement for a family of three according to the USCIS poverty guidelines. See *Form I-864P, 2012 HHS Poverty Guidelines for Affidavit of Support*, March 1, 2012. Moreover, it is unclear why the applicant, currently 23 years of age, is unable to alleviate this financial hardship by finding employment in Ghana. Counsel indicates that the applicant now lives alone, adding to the financial burden shouldered by the parents, and the parents assert that they cannot afford to continue with their education given this burden. Although the parents' 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). Given the evidence of record, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant's parents will face if the present separation continues.

The record reflects that the parents have symptoms of anxiety and depressed mood given the present separation. While the AAO acknowledges that the applicant's parents would face difficulties as a result of the applicant's inadmissibility, we do not find evidence of record to demonstrate that their 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 parents are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude that they would suffer extreme hardship if the waiver application is denied and the applicant remains in Ghana without her parents.

The record also lacks sufficient evidence of extreme hardship upon relocation to Ghana. The AAO notes that both parents are natives of Ghana, and have spent some time there. Furthermore, there is insufficient evidence that the applicant's parents, with their skills and background, would be unable to find adequate employment to meet their expenses in Ghana. Although the financial planner indicates that the parents will not be able to find adequate employment in Ghana, there is no indication that he is qualified to render opinions on the economy and employment in Ghana, and even if he were qualified, he further fails to analyze employment opportunities available to persons with the parents' background.

The AAO notes that the applicant's mother may have some difficulty obtaining hypertension medication in Ghana, that relocation will entail separation from family members in the United States, and that both parents will experience some hardship upon returning to the country of their birth. However, we do not find evidence of record to show that their hardship would rise above the distress normally created when families relocate as a result of inadmissibility or removal. In that the applicant fails to provide sufficient evidence to show the financial, medical, emotional or other impacts of relocation on the applicant's parents are in the aggregate above and beyond those normally experienced, the AAO cannot find that the parents would experience extreme hardship upon relocation to Ghana.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, 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 her U.S. Citizen parents as required under section 212(i) of the Act. As the applicant has not established extreme hardship to qualifying family members no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

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.