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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
*Office of Administrative Appeals*  
20 Massachusetts Ave. N.W. MS 2090  
Washington, D.C. 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



H/S

DATE: **AUG 08 2012**

OFFICE: BALTIMORE, MARYLAND



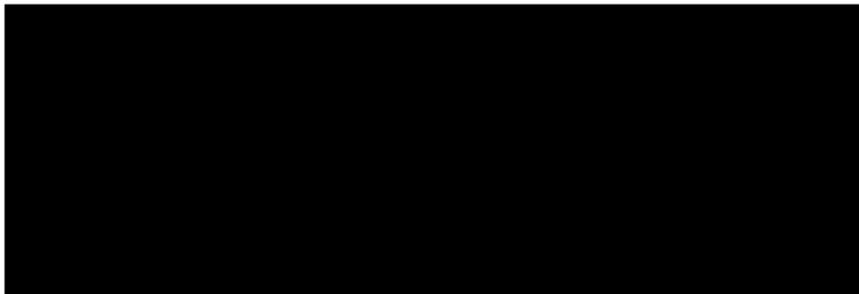
IN RE:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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, Baltimore, Maryland, 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 a 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 having procured admission into the United States by willful misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant, through counsel, does not contest the finding of inadmissibility. Rather, she seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside with her husband and children in the United States.

The District Director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the District Director*, dated November 25, 2009.

On appeal, counsel asserts that the U.S. Citizenship and Immigration Services (USCIS) erred by denying the applicant's waiver application without first issuing a Notice of Intent to Deny. *See Notice of Appeal or Motion* (Form I-290B), dated December 24, 2009. The AAO disagrees with counsel's assertion. If the initial evidence submitted with the petition does not establish eligibility, USCIS may deny the petition without requesting additional evidence. 8 C.F.R. §103.2(b)(8)(ii). Accordingly, the District Director appropriately denied the waiver application without first requesting additional evidence.

Counsel also asserts that the evidence of hardship in the instant case is equal to or greater than cases in which the BIA has found extreme hardship: *Matter of Gee*, 11 I&N Dec. 639 (BIA 1966); *Matter of Woo*, 10 I&N Dec. 347 (BIA 1963); *Matter of Lum*, 11 I&N Dec. 295 (BIA 1965); and *In re O-J-O-*, *supra*. *See Form I-290B, supra*. The AAO finds counsel's assertion unpersuasive as the cited cases are distinguishable from the particular circumstances on appeal; the cited cases concern individuals seeking relief through suspension of deportation, for which the primary issues involved hardship solely to the applicant and whether the applicant met the continuous physical presence requirement and established good moral character during the requisite period.

Counsel further asserts that USCIS failed to adequately consider: family unity; hardship to the applicant's children; all evidence on the record; and the relevant hardship factors, in the aggregate, as required by the Board of Immigration Appeals (BIA) in *In re O-J-O-*, 21 I&N Dec. 381 (BIA 1996). And, counsel asserts that in denying the applicant's waiver application, USCIS improperly relied on *Matter of W-*, 9 I&N Dec. 1 (BIA 1960) as the facts on appeal are distinguishable: the applicant and her spouse have children, and the entire family is dependent on the applicant for support. Additionally, counsel asserts as distinguishable cases: *Hassan v. INS*, 927 F.2d 465 (9<sup>th</sup> Cir. 1991); *Matter of Chumpitazi*, 16 I&N Dec. 596 (BIA 1978); *In re Pilch*, 21 I&N Dec. 627 (BIA 1996); and *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978). *See Form I-290B, supra*.

The record includes, but is not limited to: briefs from previous and current counsel; letters of support; identity, medical, employment, financial, and academic documents; certificates; mental health articles; country conditions information; and photographs. The entire record was reviewed and considered in rendering a decision on the appeal.

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

(C) Misrepresentation.-

(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).

The Field Office Director found the applicant inadmissible for having procured admission to the United States under the Visa Waiver program on December 23, 1999, by presenting a United Kingdom of Great Britain and Northern Ireland passport that did not belong to her. The record supports the finding, and the AAO concurs that the misrepresentation was material. The AAO finds that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides in pertinent part:

(1) The Attorney General [now 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 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.

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. Hardship to the applicant or the applicant's children 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. 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; *In re Pilch*, 21 I&N Dec. at 632-33; *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. at 383 (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., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *In re 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 spouse will suffer extreme emotional, medical, and financial hardship in the applicant's absence as: the break-up of the applicant's and her spouse's family will negatively impact the spouse and their children; the spouse has several medical conditions for which he is receiving treatment as the beneficiary of the applicant's employment-based health insurance; and he is currently unemployed, and thereby, he and their children are entirely dependent on the applicant. The spouse discusses how: he cannot imagine his life without the applicant as they are so emotionally attached to one another, and he does not know how he would be able to take care of their children as a single parent; the United States is their family's home, where they do not have other familial support; their children have never been separated from the applicant; the applicant takes care of them; the applicant serves as the sole breadwinner and pays their financial obligations; in her capacity as a caterer, the applicant monitors his food, prescriptions, and exercise; and he would be unable to pursue his advanced degree, and he would lose their children to social services as he would be unable to provide accommodations without the applicant's financial help.

The evidence on the record is sufficient to establish that the applicant's spouse has medical conditions such as dyslipidemia, hypertension, hyperparathyroidism, proteinuria, vitamin D deficiency, and hearing loss; that he suffers from blood pressure discrepancies and paresthesias that requires monitoring, and that because of his diagnoses, he may experience some medical hardship in the applicant's absence. *However, the AAO finds that the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals.* The medical documentation in the record only provides a general statement about the spouse's medical conditions. The record does not include a discussion concerning the severity of the spouse's conditions, the type of treatment for his conditions, or the necessity of the applicant's participation in that treatment. Moreover, the record lacks any specific evidence of the spouse's or the children's current mental health status. The record only includes articles that generally discuss the mental health of the children of parents who are separated. As the record lacks an explanation in plain language of the exact nature and severity of the applicant's spouse's physical and mental health or any ongoing treatment, the AAO is not in the position to reach conclusions concerning the severity of the physical or mental conditions and the treatment needed.

Additionally, the AAO notes that the record is sufficient to establish that the applicant's spouse was employed as an Independent Contractor by Falcon Express Transportation, Inc., from April 15, 1998 through June 4, 2008, to provide courier services. However, the record does not include any evidence of the applicant's current salary. Also, the record includes evidence of the applicant's certifications and trainings as a medication technician, in universal first aid, and in food preparation, cooking, and inspection. However, the record does not include any specific documentation on employment or labor market conditions in Ghana, and the applicant's inability to contribute to her and the spouse's households with her specialized training. Without specific evidence in the record, the AAO cannot conclude that the record establishes that the spouse's financial hardship would go beyond the normal consequences of inadmissibility.

The AAO notes the concerns regarding the applicant's spouse's emotional, medical, and financial hardship that he may experience in the applicant's absence, but finds that even when this hardship is considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of separation from the applicant.

Counsel contends that the applicant's spouse will suffer extreme hardship if he were to relocate to Ghana to be with the applicant as: country conditions in Ghana are dire; 28.5% of its population lives below the poverty line; the unemployment rate is 11%; and there is widespread crime. Counsel also contends that the applicant's children will suffer extreme hardship as they have never been to Ghana. The applicant's spouse indicates that: he only has some college education, and thereby, his chances of securing a good job are small; they do not have any savings, so they would be unable to start a business; the minimum wage is about \$2.00/day; crime is out of control with daily occurrences; healthcare facilities are almost nonexistent; and the education system is broken.

Although the applicant's spouse may suffer some hardship if he relocates to Ghana, the record does not establish that the hardship goes beyond what is normally experienced by qualifying relatives of inadmissible individuals. The record does not include any evidence regarding whether the applicant, a national of Ghana, continues to maintain familial and social ties there. And, as a national of Ghana, the spouse should have reduced difficulty in acclimating to the society and culture. Also, the AAO recognizes the subjective concerns of criminal activities, employment and economic opportunities, as well as healthcare in Ghana; however, the record does not include any specific evidence to show how social, employment, and economic conditions in Ghana would directly impact the spouse.

Although the applicant's spouse may experience some hardships as a result of relocation to Ghana to be with the applicant, the AAO finds that even when these hardships are considered in the aggregate, the record fails to establish that the applicant's spouse will suffer extreme hardship as a result of relocation with the applicant.

In this case, the record does not contain sufficient evidence to show that the hardship faced by the qualifying relative, considered in the aggregate, rises 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 United States citizen spouse as required under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for 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.