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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: AUG 13 2012

Office: ATLANTA, GA

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

The applicant is a native and a citizen of Ghana who used false documents in an attempt to enter the United States. The applicant 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). He is the spouse of a U.S. citizen. The applicant is seeking a waiver under section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative, his U.S. citizen spouse, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) on September 4, 2009.

On appeal, counsel for the applicant asserts that the applicant is not inadmissible for misrepresentation and that the applicant's spouse and children will experience extreme hardship due to his inadmissibility. Attachment, *Form I-290B*, received October 2, 2009.

The record contains, but is not limited to, the following documentation and evidence: a brief from counsel for the applicant; a statement from the applicant; a copy of an Order of the Immigration Judge in the applicant's exclusion proceeding; a statement from the applicant's spouse; a statement from the applicant's church; statements from friends and associates of the applicant; and country conditions materials on Ghana. The entire record was reviewed and all relevant evidence considered in rendering this decision.

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

- (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 chapter is inadmissible.

The record indicates that the applicant presented a counterfeit Lawful Permanent Resident (LPR) card when attempting to enter the United States in 1993, and thus attempted to procure entry to the United States by materially misrepresenting a material fact, to wit, his status as a lawful permanent resident. Therefore the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

Counsel for the applicant asserts on appeal that the applicant should not be considered inadmissible due to misrepresentation because he did not present his counterfeit LPR card to a U.S. government official, and that when he got off the plane he told inspection agents that he did not have a visa and the counterfeit LPR card was found when he was searched. *Statement in Support of Appeal*, dated October 1, 2009.

The record does not contain any evidence to corroborate counsel's assertions. The applicant was interviewed by an inspection agent when he arrived in the United States. In a sworn statement taken at the time the applicant acknowledges that he had purchased the counterfeit LPR card he used in Beijing, China. There is no evidence that the card was discovered by immigration officers in the course of a search. In the transcribed interview the inspection agent had to ask the applicant what was in his possession, further indicating that he was not "searched". In that statement, signed by the applicant and the interviewing agent, the applicant acknowledged that he was considered inadmissible because he had applied for admission into the United States using a false LPR card. In addition, the record contains a written incident report by the inspection agent to whom the applicant had presented his Ghanaian passport and false LPR card, dated April 28, 1993, in which the agent details how the applicant had attempted to enter the United States by presenting his false LPR card. There is nothing in the sworn statement by the applicant, or incident report from the inspection agent, that reflects that the applicant had attempted to retract his misrepresentation, that he attempted to notify inspection agents that he did not have a valid visa, that he was searched, and nothing which otherwise indicates the applicant had not presented the false LPR card to inspection agents. The evidence clearly establishes that the applicant did present his false LPR card to a government official when attempting to enter the United States.

Counsel further asserts that an immigration judge, in determining the applicant's excludability, only found him inadmissible pursuant to section 212(a)(7)(A)(1) of the Act, and not section 212(a)(6)(C)(i) of the Act. The immigration judge's finding of section 212(a)(7)(A)(1) inadmissibility is not exclusive of being found inadmissible pursuant to section 212(a)(6)(C)(i) of the Act by the AAO, nor is the AAO bound to the immigration judge's finding in a removal proceeding. The legal standards and criteria to establish excludability are distinct from determining an applicant's inadmissibility when applying for admission. Further, it is noted that the exclusion order was entered in absentia because the applicant had failed to attend his removal hearing. Counsel's assertions bear no legal merit.

Based on these determinations the AAO finds the applicant to be inadmissible pursuant to section 212(a)(6)(C)(i) of the Act.

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

- (1) The Attorney General may, in the discretion of the Attorney General, 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 Attorney General 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 or, in the case of a VAWA self-petitioner, the alien demonstrates extreme hardship to the alien or

the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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 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 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 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 for the applicant asserts that the applicant's spouse and daughters would experience extreme hardship upon relocation to Ghana. *Brief in Support of Appeal*, received October 2, 2009. She asserts that the applicant's spouse and daughters would be impoverished because of the high poverty rate in Ghana, that they would be subject to Female Genital Mutilation and would be unable to obtain medical care because of Ghana's low public expenditure on health care. Counsel further asserts that their lives would be shortened because of the life expectancy rate and high child mortality rate.

The record includes country conditions materials on Ghana published by the U.S. State Department and World Health Organization. While these documents may demonstrate that Ghana has a lower quality of life than the United States, the applicant has not drawn connections between the reports and specific challenges his spouse would face. Counsel has asserted that the applicant would not be able to find employment in Ghana, and that the applicant's spouse and daughters would be subject to Female Genital Mutilation (FGM). Human Rights Watch indicates that FGM is a procedure still practiced in parts of Ghana, however, as with assertions of economic hardship upon relocation, there is nothing which indicates that the applicant or his family would have to subject their daughters to the procedure.

The applicant's spouse has asserted that she has suffered from Uterine fibroids and would not be able to receive adequate medical care if she relocated to Ghana, and that her daughters would not be able to progress academically in Ghana. The record does not contain any documentation to corroborate her assertion that she suffers from any medical condition, and the country conditions materials submitted, while indicating health care in Ghana may not have the same quality in the United States, does not establish that she would be unable to receive medical treatment for any such condition or that the applicant's spouse and daughters would fall within the range of those unable to receive medical care.

The AAO notes that children are not qualifying relatives in this proceeding, as such, any hardship to them is only relevant to the extent that it creates impacts on the qualifying relative, in this case the applicant's spouse. Although the applicant's spouse has asserted that her daughters would not be able to advance academically, the AAO does not find the record to sufficiently support this assertion. Although the quality of education in Ghana may not adhere to the same standards found in the United States, this does not constitute an uncommon hardship. The AAO does not find the record to establish the applicant's daughters would experience hardship to a degree that would elevate the challenges of the applicant's spouse to an extreme level.

While the AAO recognizes that the quality of life in Ghana differs from that of the United States, the applicant has not shown that conditions there are so severe that all individuals residing in the country face extreme hardship. The evidence submitted does not establish that the hardship factors for the applicant's spouse, even when considered in aggregate, would rise to the level of extreme hardship.

Counsel asserts on appeal that the applicant's spouse would experience extreme hardship if the applicant were removed and she remained in the United States. *Brief in Support of Appeal*, received October 2, 2010. The applicant's spouse has submitted a statement asserting that she has not worked in four years and depends on the applicant financially. *Statement of the Applicant's Spouse*, received October 2, 2010. She states that she worries constantly about his removal, and that without the applicant present to assist them they will not be able to meet their financial needs.

There is nothing which indicates the applicant's spouse is unable to obtain employment. There is no documentation of the applicant's or his spouse's income, what their financial obligations are, or that they have accumulated any significant debt. Without evidence to support her assertions the AAO does not find the record to establish that she will experience any uncommon financial hardship if the applicant were removed.

The AAO recognizes that the applicant and her daughters would experience some emotional impact if the applicant is removed. However, without evidence that the emotional impact on the applicant's spouse will rise above the common consequences, the AAO does not find the record to establish any uncommon emotional impact on the applicant's spouse.

When the hardship factors due to separation are considered in the aggregate, the AAO does not find them to rise above the common hardships associated with separation such that they constitute extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse faces extreme hardship if the applicant is refused admission. The AAO recognizes that the applicant's spouse may suffer emotionally and financially as a result of separation from the applicant or relocation to Ghana. These assertions, however, are common hardships associated with removal and separation, and do not rise to the level of "extreme" as informed by relevant precedent. U.S. court decisions have repeatedly held that the common

results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that he is eligible for the benefit sought. *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.