



U.S. Citizenship
and Immigration
Services



#5

DATE:

OFFICE: ACCRA

FILE:



IN RE: DEC 08 2012



APPLICATION:

Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i) and section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO), and this matter is now before the AAO on a motion to reconsider. The motion will be granted and the underlying application remains denied.

The Field Office Director found the applicant 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 attempting to procure entry to the United States by fraud or willful misrepresentation. The Field Office Director also found the applicant to be inadmissible to the United States pursuant to section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for failure to attend removal proceedings. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse and children.

The Field Office Director found that the applicant was subject to inadmissibility for her failure to attend removal proceedings, a provision of law for which there is no waiver, and denied her Form I-601 application for a waiver accordingly. *Decision of the Field Office Director*, dated November 5, 2009. On appeal, the AAO issued a notice of intent to deny on September 29, 2010, finding that the applicant is not inadmissible to the United States based upon her failure to attend removal proceedings. However, the AAO found that the applicant is inadmissible to the United States based upon her attempt to procure entry to the United States by fraud or willful misrepresentation and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The AAO also found that the applicant failed to demonstrate extreme hardship to a qualifying relative. The applicant submitted a reply to the AAO's notice of intent to deny and the AAO subsequently denied the applicant's appeal. The AAO determined that the applicant has demonstrated extreme hardship to a qualifying relative upon separation from the applicant, but not relocation. *See Decision of the AAO*, dated February 25, 2011.

In his motion to reconsider, the applicant asserts that the AAO is incorrect as a matter of law in finding that an applicant must demonstrate that a qualifying relative would experience extreme hardship both upon separation and relocation. The applicant also attached a third statement from a psychiatrist concerning the emotional difficulty that would be experienced by the applicant's spouse.

A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. The applicant asserts that the AAO incorrectly applied the law in determining that the applicant's qualifying relative must demonstrate extreme hardship upon both separation and relocation in order for the applicant's waiver application to be approved. The applicant's motion to reconsider will be granted.

Section 212(a)(9)(B) of the Act, in pertinent part, provides:

(B) ALIENS UNLAWFULLY PRESENT.-

- (i) In general.- Any alien (other than an alien lawfully admitted for permanent residence) who-

....

(II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

....

(v) Waiver.-The Attorney General has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or 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 such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien. No court shall have jurisdiction to review a decision or action by the Attorney General regarding a waiver under this clause.

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.

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 sections 212(a)(9)(B)(v) and 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 an applicant or any 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.

Upon review, even in considering the applicant's submission of an updated letter concerning the applicant's spouse's psychological condition, the AAO still does not find that the applicant has demonstrated extreme hardship to her spouse upon relocation to Ghana. In its previous decision, the AAO determined that the applicant had submitted sufficient evidence to demonstrate extreme hardship to her spouse upon separation based upon, in the aggregate, his emotional hardship upon separation, his inability to provide care to his children because of his demanding work schedule, and the financial hardship that he is experiencing, evidenced by his failure to meet monthly payments without the applicant's additional income.

The applicant submitted an updated psychiatrist's letter asserting that the applicant's spouse suffers from major depressive disorder with very severe depression. It is noted that the psychiatrist's letter states that the central factor driving the depression of the applicant's spouse and the duress of his children is the separation of his family. It is also noted that the applicant's spouse and his children would be reunited with the applicant if they relocated to Ghana. Further, the psychiatrist's letter asserts that the AAO's previous decision found extreme hardship for the applicant's spouse upon separation based upon his major depressive disorder, but did not find the same upon relocation. As noted above, the applicant's spouse's psychological state was one amongst several factors that, in the aggregate, led to the AAO's determination that the applicant's spouse is suffering extreme hardship due to separation from the applicant. The updated psychiatrist's letter also asserts that the applicant's spouse and his son would not be able to access appropriate mental health treatment in Ghana. It is noted that the psychiatrist's previous letter of November 17, 2010 stated that the applicant's spouse was suffering from major depressive disorder with significant depression, one of the applicant's son's was suffering from significant depression, and recommended psychiatric treatment for the applicant's spouse. The letter further stated that the applicant's spouse does not have health coverage in Ghana and it would be prohibitive for him to procure psychiatric care. However, the record does not show that the applicant's spouse, as a contractor, has health coverage in the United States. Further, there is no

indication that the applicant's spouse and his son have sought any psychiatric treatment for their conditions while in the United States. In fact, the psychiatrist's updated letter from March 18, 2011 does not indicate that the applicant's spouse received any psychological treatment since the psychiatrist's diagnosis and recommendation.

The applicant's spouse and his psychiatrist's letter assert that his children will have a difficult time adjusting to relocation in Ghana and the applicant's spouse asserts that, to his understanding, the public schools would not conduct lessons in English. It is initially noted that the applicant's children are not qualifying relatives in the context of this application so that any hardship they would suffer will be considered only insofar as it affects the applicant's spouse. Further, the record does not contain supporting documentation concerning the availability of English-based schools for the applicant's children in Ghana.

The applicant's spouse also asserts that he would not be able to find suitable employment in Ghana if he relocated. The applicant's spouse asserts that he works for Federal Express in the United States and that he was told that there are no openings in Ghana's Federal Express. The applicant's spouse also contends that the delivery system is challenging in Ghana compared to the United States. First, it is noted that the applicant's inquiry regarding any available positions in Ghana occurred over two years ago. It is also noted that the applicant's spouse is a native of Ghana and has familiarity with the customs and language of Ghana. The record contains reports on human rights and mental health conditions concerning Ghana, but there is no indication that the applicant's spouse would be unable to procure employment in Ghana. It is noted that the applicant is currently residing in her uncle's home in Ghana. There is no information concerning the extent to which the applicant and her spouse have family ties in Ghana that could assist with their relocation.

Counsel asserts that since the applicant's spouse has always stated that he did not intend to relocate to Ghana to reside with the applicant, the AAO should only have considered hardship for the applicant's spouse upon separation. Counsel relies upon *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994), in contending that the AAO improperly considered whether the applicant's spouse would experience extreme hardship if he relocated to Ghana. The Board of Immigration Appeals (BIA), in *Matter of Ige*, made a determination that the applicant had not demonstrated extreme hardship to his qualifying relative child upon relocation to the applicant's native country. *Id.* The BIA also found that if the applicant's child would not face extreme hardship upon relocation to the applicant's country, then it would be the applicant's personal choice to leave his child behind in the United States. *Id.* The AAO, in its decision of February 25, 2011, determined that the applicant has demonstrated extreme hardship to her spouse upon separation, but failed to demonstrate extreme hardship to her spouse upon relocation to Ghana. As such, pursuant to the guidance of *Matter of Ige*, it follows that it would be the applicant's spouse's personal choice if he decided to remain apart from the applicant in the United States. *Id.*

Counsel for the applicant, despite his reliance upon the BIA's holding in *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994), asserts that the BIA was mistaken in inferring that the hardship due to separation from an applicant could be attributed to personal choice rather than deportation.

Counsel asserts that the BIA abused its discretion in claiming that hardship based upon the separation of a child from a deported parent, based on parental choice, need not be considered. The Ninth Circuit in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), stated that the BIA could not adopt a per se rule that eliminates the need to consider hardship to a child upon separation from a deported parent. *Id.* It is noted that the AAO did not adopt any such per se rule in examining the applicant's appeal. In fact, the AAO thoroughly considered evidence submitted concerning the applicant's spouse's hardship, both upon separation and relocation, and reached its determinations based upon this evidence. Counsel asserts that the AAO should not have examined hardship to the applicant's spouse upon relocation to Ghana. However, it is noted that the Ninth Circuit case cited by counsel to support his assertions considered an applicant's qualifying relative's hardship claims upon both separation and relocation in its extreme hardship determination. *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996).

Counsel asserts that the BIA's findings in *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994) may have been based upon policy reasons involving applicants and their children who are born in the United States. Though public policy may have been a factor in *Matter of Ige*, counsel fails to articulate any legal precedent that would require the AAO to deviate from the BIA's guidance as it applies to extreme hardship to qualifying relatives.

The AAO finds that the applicant has failed to demonstrate that the AAO's decision of February 25, 2011 is based upon an incorrect application of the law. The applicant has also failed to demonstrate extreme hardship to a qualifying relative upon relocation to Ghana. 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. In proceedings for application for waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 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. The motion to reconsider is granted and the prior decision of the AAO is affirmed..

ORDER: The motion to reconsider is granted, the prior decision of the AAO is affirmed, and the application remains denied.