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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

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U.S. Citizenship
and Immigration
Services



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DATE:

OFFICE: ACCRA, GHANA

FILE: 

IN RE: **JAN 25 2012** 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) and under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

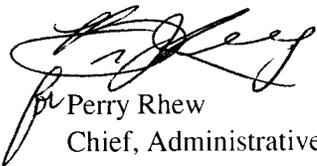
ON BEHALF OF APPLICANT: SELF-REPRESENTED

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 record reflects that the applicant is a native and 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 gained entry into the United States by willfully misrepresenting a material fact, and pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (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 admission within ten years of her last departure. The applicant is the spouse of a United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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.

The Field Office Director found that the applicant had 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. *Decision of the Field Office Director*, dated July 29, 2009.

On appeal, the applicant asserts that her qualifying relatives would experience extreme hardship as a result of denial of her waiver application. The applicant submits a statement and a photograph. *See Notice of Appeal or Motion (Form I-290) and attachments.*

The record includes, but is not limited to, statements from the applicant and her spouse describing the hardship claimed; 3 letters, dated in 2006, pertaining to the applicant's child's schooling; and a 2005 income tax return and a W-2 Wage and Tax Statement for the applicant's spouse. The entire record was reviewed and considered in arriving at a decision on appeal.

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

- (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 record reflects that the applicant gained entry into the United States on November 12, 1995 by presenting a passport and visa issued to another person. The applicant contends, however, that she used this documentation to escape persecution in Ghana. She states that she feared persecution due to her activism in the 1992 presidential elections and that her use of a passport and visa in another identity was for "her safety."

We acknowledge that an alien's entry into the United States as a nonimmigrant under a false identity does not necessarily constitute a material misrepresentation within the meaning of section

212(a)(6)(C)(i) of the Act. In *Matter of Gilkevorkian*, 14 I&N Dec. 454 (BIA 1973), the Board of Immigration Appeals (BIA) found that:

An alien's entry into the United States as a nonimmigrant under a false identity did not constitute a material misrepresentation within the meaning of section 212(a)(19) of the Immigration and Nationality Act where he had adopted the false identity for a legitimate reason (to obtain employment) and had used it for a prolonged period of time prior to his entry into this country.

...
The cases have distinguished between a false identity used to facilitate entry into the United States and one used for other reasons. In *Matter of Sarkissian*, supra, on which the immigration judge relied, there was no indication that the alien used the false identity for any purpose other than to obtain a visa to enter the United States. Where a person uses a false identity long before, and for reasons unrelated to, obtaining admission to the United States, and over a long period of time, misrepresentation as to identity made when applying to enter the United States has been held not to be material, *U.S. ex rel. Leibowitz v. Schlotfeldt*, 94 F.2d 263 (C.A. 7, 1938),

...
The Attorney General has established the test that a misrepresentation is material if (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which might have resulted in a decision to exclude the alien, *Matter of S-- and B- - C--*, 9 I&N Dec 436 (BIA 1961). Inasmuch as the respondent's use of the false identity was for a legitimate reason and was for a prolonged period prior to entry, a line of relevant inquiry was not cut off. Inquiry would have revealed no information damaging to the respondent so as this record indicates. No ground of excludability would have been uncovered. (Citations omitted).

In the present case, however, the record lacks sufficient documentation to establish the applicant's assertion. In support of her assertion, the applicant submits a photograph which she states was taken during her political involvement in Ghana. The photograph appears to depict the applicant in a vehicle with other passengers, but, by itself, the photograph does not portray the nature and extent of any of her activities. The applicant does not submit any additional documentation to support her assertion that she fled Ghana by concealing her identity for fear of persecution on account of her political opinion.

The AAO finds that the record lacks sufficient documentation to support the applicant's assertion that she had assumed the name of [REDACTED] in order to escape persecution in Ghana, rather than misrepresenting her identity in order to enter the United States.

The burden of proving admissibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. While the applicant contends that she had used the travel documents of [REDACTED] in order to escape persecution in Ghana, she presented these documents to U.S. officials in order to procure admission to the United States. This case is therefore distinguished from cases in which aliens used fraudulent documents only *en route* and did not present them to U.S. officials for admission, but, rather,

immediately requested asylum. *See, e.g., Matter of D-L- & A-M-*, 20 I&N Dec. 409 (BIA 1991); *cf. Matter of Shirdel*, 18 I&N 33 (BIA 1984). In the applicant's case, she did not reveal her true identity at entry, nor did she seek asylum.

The applicant's admission that she had procured admission into the United States by use of another person's travel documents does not constitute a timely retraction. The definition of a timely retraction is found in the Foreign Affairs Manual (FAM), which offers guidance regarding section 212(a)(6)(C) of the Immigration and Nationality Act (Act or INA). 9 FAM 40.63 N4.6 specifies that:

A timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for INA 212(a)(6)(C)(i) inadmissibility. Whether a retraction is timely depends on the circumstances of the particular case. In general, it should be made at the first opportunity. If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview.

The record does not support the assertion that the applicant made a timely retraction of her use of a passport and visa belong to another person after she arrived in the United States.

It is also noted that on both her Biographic Information (Form G-325A), dated January 5, 2005, and on her Application for Immigrant Visa and Alien Registration (Form DS-230) where the applicant was asked for "Other Names Used," she indicated "NONE." On these forms the applicant failed to disclose her use of the name [REDACTED]. The applicant's failure to disclose that she had used the name [REDACTED] on her identity and entry documents are also material misrepresentations that would render the applicant inadmissible under section 212(a)(6)(C)(i) of the Act.

The AAO therefore finds that the applicant misrepresented her identity in order to enter the United States. As discussed above, we also find the applicant's failure to disclose that she had used the name and entry documents of [REDACTED] are material misrepresentations. Each misrepresentation is material, and triggers the applicant's inadmissibility under section 212(a)(6)(C)(i) of the Act.

The applicant is, therefore, inadmissible under section 212(a)(6)(C)(i) of the Act for having procured entry by misrepresenting a material fact.

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

(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.

In the present application, the record indicates that the applicant entered the United States on November 12, 1995 as a B-2 nonimmigrant and was admitted until May 11, 1996. The applicant resided in the United States in unlawful status until May 19, 2006 when she departed for Ghana.

The applicant accrued unlawful presence from April 1, 1997, the effective date of the unlawful presence provisions, until May 19, 2006 when she departed the United States. The applicant is seeking admission into the United States within ten years of her departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for a period of more than one year.¹

Section 212 of the Act provides, in pertinent part, that:

(i) (1) The Attorney General [now the Secretary of Homeland Security] 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.

Section 212(a)(9)(B)(v) of the Act provides for a waiver of section 212(a)(9)(B)(i) inadmissibility as follows:

The Attorney General [now Secretary of Homeland Security] 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 . . . 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.

A waiver of inadmissibility under sections 212(i) or 212(a)(9)(B)(v) 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 other family members 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-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

¹ It is noted that the record reflects that on January 25, 2006, the applicant was arrested by the Police Department New York, NY, and was charged with Menacing, 2nd 1316, Assault 3 1399, and Criminal Possession of a Weapon 4 5212, for which there is no court disposition and that the applicant may be inadmissible under section 212(2)(A)(i)(I) for having committed a crime involving moral turpitude. We need not address this issue as the appeal in this matter is being dismissed.

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.

On appeal, the applicant asserts that continued separation would result in both emotional and financial hardship to her spouse. She states that her spouse has been diagnosed with prostate cancer for which he has had a procedure, and further, that he is hypertensive and is being treated for chronic pain. The applicant states that while her spouse normally uses his summer vacation for treatment, he has had to skip his treatment to visit her in Ghana. She indicates that he is unable to obtain this treatment in Ghana and that travelling deprives her spouse of the rest he requires. The applicant also asserts that her eight-year-old son (now ten years old), is living with his biological father, and is growing up without her. She states that it is traumatic for her son and her spouse because her spouse has been unable to speak with her son to ascertain his welfare and development.

The applicant also asserts that travelling to Ghana has resulted in financial hardships for her spouse. She states that her spouse now has to support her, her children and his children, and his elderly parents in Ghana. If she were in the United States, the applicant maintains, she could help him in the support of his children and parents.

In a September 25, 2010 letter, the applicant's spouse states that he is battling prostate cancer and he needs his wife to help him fight the cancer. He also states that the applicant's son needs his mother as he is sick.

The record, however, does not support these claims. The record lacks evidence to establish the applicant's spouse's medical conditions or how they affect his ability to meet his responsibilities. It also lacks supporting documentation on the state of the health care system in Ghana to support the applicant's assertions that her spouse's medical conditions could not be treated there.

The record further fails to establish the applicant's spouse's financial situation. The AAO finds no documentary evidence of his income beyond a 2005 Income Tax return and a 2005 W-2 Wage and Tax Statement and a similar lack of evidence concerning his financial obligations including his support of the applicant, her children, his children and parents. 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)).

The AAO also notes the claims of hardship made by the applicant on behalf of her son, but observes that the applicant's son is not a qualifying relative in this proceeding and that his hardship can, therefore, be considered only to the extent they affect a qualifying relative. The record, however, fails to demonstrate what hardships are being experienced by the applicant's son and further lacks evidence of the impact of such hardships on the applicant's spouse, the only qualifying relative.

The AAO finds, therefore, that when the hardship factors in this matter are considered in the aggregate, the applicant has failed to establish that her U.S. citizen spouse will experience hardship beyond what would normally be expected as a result of separation.

Regarding relocation, the applicant asserts that her spouse cannot get the treatment he requires for his medical conditions in Ghana. She also contends that he would not be able to find suitable employment in Ghana and that he would lose the entitlements he receives from his current job, employment that he has held for the past 15 years. As noted above, however, the record lacks documentation to establish that the applicant's spouse has health problems or that he could not obtain medical treatment in Ghana for any medical conditions he might have. It further contains no documentary evidence to support the applicant's assertion that her spouse is currently employed or that he would be able to find comparable employment in Ghana. Going on record without supporting documentation is not sufficient for purposes of meeting the burden of proof in these proceedings. *Id.*

The AAO's review of the documentation in the record finds that even when considered in its totality, the evidence fails to establish extreme hardship under sections 212(i) and 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *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.