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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**



H15



DATE:

JUL 18 2012

OFFICE: COLUMBUS, OHIO

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 with the field office or service center that originally decided your case by filing a 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, Columbus, Ohio. The matter came before the Administrative Appeals Office (AAO) on appeal. On June 25, 2012, the AAO rejected the appeal as not properly filed due to the lack of a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, in accordance with the regulations at 8 C.F.R. §§ 292.4(a) and 103.3(a)(2)(v)(A)(1)-(2). The AAO subsequently received a properly executed Form G-28 with sufficient indication that it was submitted within the allotted timeframe. Accordingly, the AAO will reopen the matter *sua sponte* and address the merits of the appeal. The appeal will be dismissed.

The applicant is a native and citizen of Ghana who 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 seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The Field Office 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 Field Office Director*, dated March 5, 2010.

On appeal counsel asserts that the applicant's spouse will suffer extreme hardship of a medical nature if she relocates to Ghana. *Form I-290*, Notice of Appeal or Motion, received April 6, 2010.

The record contains, but is not limited to: Form I-290B and counsel's statement thereon; numerous immigration applications and petitions; birth, marriage, medical and financial records; the applicant's sworn statement; a 2005 hardship affidavit by applicant's spouse and a related brief by former counsel in support of a previous Form I-601 application. The entire record was reviewed and considered in rendering this decision on the appeal.

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

- (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.

The record reflects that the applicant was issued a P-3 nonimmigrant visa on October 8, 1998 after representing himself as married when he was unmarried at the time. The applicant admitted during a November 1, 2002 interview that he did so believing that being married would help him obtain a visa. Based upon the foregoing, the applicant was found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i). The applicant does not contest his inadmissibility on appeal. He requires a waiver under section 212(i) of the Act.

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

- (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

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 can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's spouse is his only qualifying relative. 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).

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.

The record reflects that the applicant’s spouse is a 47-year-old native and citizen of the United States. No assertions of separation-related hardship have been made on appeal. The Field Office Director, while acknowledging evidence that the applicant’s spouse had a stroke in January 2006, specifically notes that there is no explanation or evidence of her current medical condition and whether the applicant’s departure would pose an extreme hardship. See *Decision of the Field Office Director*, dated March 5, 2010. On appeal, counsel submits a single-paragraph letter from [REDACTED] which reads in its entirety: [REDACTED] has a significant medical history which includes history of Cerebral Infarction (stroke), Cerebral Aneurysm, HTN, artificial heart valve, and is on chronic coumadin therapy. Due to complicated her medical conditions it would be detrimental to her health if she were sent back to Ghana. [REDACTED] needs to stay in America for healthcare.” [REDACTED] does not address whether the applicant’s spouse is currently undergoing medical treatment other than taking Coumadin. Counsel contends on Form I-290B, page 2 that the applicant’s spouse’s stroke, “severely limited her functionality and necessitated constant medical attention here in the United States,” and she “currently undergoes extensive medical treatment for her condition which has never subsided.” Without supporting documentary evidence, however, the assertions of counsel will not satisfy the applicant’s burden of proof and such unsupported assertions do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

It is presumed that severe health conditions such as those identified, with substantial medical care, would result in detailed medical records that could be readily obtained by the applicant and his spouse. The applicant has not asserted or shown that more complete medical records are unavailable. As discussed above, the single, brief medical letter provided on appeal is not sufficient documentation to show by a preponderance of the evidence the current state of the applicant's wife's physical capacity, medical needs, or future prognosis.

Counsel further states: "the applicant has not claimed financial loss or loss of employment solely upon his return to Ghana..." See Form I-290B, page 2. Neither economic hardship nor any form of hardship has been asserted on appeal or earlier in support of the Form I-601, addressing separation from the applicant in the event of his removal.

The AAO acknowledges that separation from the applicant may cause difficulties for his spouse. However, the evidence in the record is insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Addressing relocation, [REDACTED] indicates that the applicant's spouse has a significant medical history for stroke and artificial heart valve, is on chronic Coumadin therapy, relocation to Ghana would be detrimental to her health, and she needs to stay in America for healthcare. [REDACTED] does not explain how the applicant's spouse's 2006 stroke, 1994 artificial heart valve, or current Coumadin therapy affect her health and life and why relocation to Ghana would be detrimental to her health. Nevertheless, the AAO acknowledges [REDACTED] opinion. The AAO recognizes that the applicant's spouse has trusted physicians in the United States who have treated her for significant medical conditions and that the level of healthcare facilities and medical services available in sub-Saharan Africa are significantly below U.S. standards. The AAO has considered these factors cumulatively as well as that the applicant's spouse has lived in the United States since her birth. Considered in the aggregate, the AAO finds that the evidence is sufficient to demonstrate that the applicant's U.S. citizen spouse would suffer extreme hardship if she were to relocate to Ghana to be with the applicant.

Although the applicant has demonstrated that his qualifying relative spouse would experience extreme hardship if she relocated abroad to reside with the applicant, we can find extreme hardship warranting a waiver of inadmissibility only where an applicant has shown extreme hardship to a qualifying relative in the scenario of relocation *and* the scenario of separation. The AAO has long interpreted the waiver provisions of the Act to require a showing of extreme hardship in both possible scenarios, as a claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. 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. Accordingly, the appeal will be dismissed.

ORDER: The matter is reopened *sua sponte*. The appeal is dismissed.