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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

[REDACTED]

715

Date: JUL 25 2012 Office: NEW YORK, NY

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[REDACTED]

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, New York, New York. The matter 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 Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with her husband in the United States.

The district director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the waiver application accordingly. *Decision of the District Director*, dated September 8, 2009.

On appeal, counsel contends the applicant established extreme hardship, particularly considering the psychologist's report in the record and considering the positive factors in the case, such as the applicant's U.S. citizen spouse and U.S. citizen stepchildren.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and her husband, Mr. [REDACTED] indicating they were married on January 3, 2008; an affidavit from Mr. [REDACTED] a psychological evaluation of Mr. [REDACTED] employment verification letters for Mr. [REDACTED] a letter from the applicant's employer; a letter of support; copies of tax returns and other financial documents; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

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

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.

Section 212(i) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], 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 [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and the applicant concedes in a sworn statement, that on February 9, 1999, the applicant entered the United States by using another person's Ghana passport and B1/B2 visitor's visa. Therefore, the record shows that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

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.

In this case, the applicant's husband, Mr. [REDACTED] states that he has four sons from a prior marriage, all of whom are U.S. citizens. Mr. [REDACTED] contends that he and his wife intend on bringing his sons to the United States to continue their schooling, but that he currently sends approximately \$500 per month to Ghana to support them. Mr. [REDACTED] also states that he has worked as a porter at a hotel since 2000, earning approximately \$500 per week. He states that his wife works as a nurse's aide and earns approximately \$450 per week. He states that without his wife's income, he is unable to support himself on his salary alone and cannot support his sons in Ghana. According to Mr. [REDACTED] he is anxious and severely depressed about his wife's immigration status, has difficulty sleeping at night, has lost weight, is constantly fatigued, and is unable to focus or concentrate at work. Furthermore, Mr. [REDACTED] states it would be an extreme hardship for him to move back to Ghana to be with his wife because he has lived and worked in the United States for the past thirteen years and has become accustomed to the culture and way of life in the United States. He states his parents are deceased, his only brother lives in the United States, and he has no friends or acquaintances in Ghana. Mr. [REDACTED] states that his plan of having his sons join him in the United States will not be realized if he returns to Ghana. He also fears he will be unable to find gainful employment in Ghana given the poor economic conditions there.

After a careful review of the record, there is insufficient evidence to show that Mr. [REDACTED] will suffer extreme hardship if his wife's waiver application were denied. Although the AAO is sympathetic to the family's circumstances, if Mr. [REDACTED] decides to stay in the United States, the record does not show that the applicant's situation is unique or atypical compared to other individuals in similar circumstances. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (holding that the common results of deportation are insufficient to prove extreme hardship and defining extreme hardship as hardship that was unusual or beyond that which would normally be expected). Although the record contains a psychological evaluation of Mr. [REDACTED] diagnosing him with Major Depressive Disorder, the report does not show that his emotional hardship is beyond what would normally be expected under the circumstances. To the extent the report contends Mr. [REDACTED] has chronic knee and ankle pain, Mr. [REDACTED] himself makes no mention of any health problems and the record does not include a letter or other documentation from a physician or other health care professional addressing the diagnosis, prognosis, treatment, or severity of his purported conditions. Regarding the financial hardship claim, the record contains tax returns showing that in 2008, the applicant earned \$32,385 in wages and Mr. [REDACTED] earned \$45,491 in wages. In addition, the record shows that the couple's cable television and phone bill is approximately \$100 per month, electricity bill is approximately \$50 per month, and cell

phone bill is approximately \$140 per month. Based on this limited information, there is insufficient information to evaluate the extent of Mr. [REDACTED] financial hardship if his wife's waiver application were denied. The AAO notes that Mr. [REDACTED] submitted a Form I-864, affirming he would financially support the applicant based on his salary alone of \$41,804. *Affidavit of Support under Section 213A of the Act (Form I-864)*, dated January 28, 2009. Even considering all of these factors cumulatively, there is insufficient evidence showing that the hardship Mr. [REDACTED] would experience amounts to extreme hardship.

Furthermore, the record does not show that Mr. [REDACTED] would suffer extreme hardship if he returned to Ghana, where he was born, to avoid the hardship of separation. According to Mr. [REDACTED] his four sons, who are currently between the ages of fifteen and twenty-one years old, live in Ghana. Therefore, although Mr. [REDACTED] contends he would like to have his sons move to the United States, he has significant family ties in Ghana. To the extent Mr. [REDACTED] contends it would be very difficult to find employment, there is no evidence in the record to support this contention. In sum, the record does not show that relocating to Ghana would make his hardship extreme, unique, or atypical compared to other individuals in similar circumstances. *See Perez v. INS, supra*. Considering all of these factors cumulatively, the AAO finds that there is insufficient evidence to show that the hardship Mr. [REDACTED] would experience is extreme, going beyond those hardships ordinarily associated with inadmissibility.

Finally, the AAO notes that counsel's contention that the applicant's waiver application should be approved because another waiver application with "an identical fact pattern" was approved is unpersuasive. As stated above, each case necessarily depends upon the facts and circumstances peculiar to each case. In the case counsel claims is identical to the instant appeal, among other factors, the applicant was from Mexico and her U.S. citizen husband did not speak, read, or write Spanish. In addition, the record contained documentation showing that the applicant's husband had a family history of depression as well as his own personal history of severe depression such that he took a prescription antidepressant. In contrast, in this case, Mr. [REDACTED] is from Ghana and there is no evidence he would be unable to communicate with others in Ghana. There is also no evidence he has any history of depression, no evidence he has been prescribed any medication for his depression, and no evidence there is any family history of depression. The facts of the other case are simply inapplicable to the instant case involving Mr. [REDACTED]

A review of the documentation in the record fails to establish the existence of extreme hardship to a qualifying relative caused by the applicant's inadmissibility to the United States. 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 section 212(i) 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.