

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
20 Massachusetts Avenue NW
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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[REDACTED]

DATE: OCT 26 2012

Office: BALTIMORE, MD

FILE: [REDACTED]

IN RE:

[REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(i) of the Immigration and Nationality 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.

Thank you,


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The District Director, Baltimore, Maryland, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reopen and reconsider. The motion to reopen will be granted, the prior decision of the AAO will be withdrawn, the appeal will be sustained, and the application will be approved.

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 an immigration benefit through fraud or willful misrepresentation and under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant is the spouse of a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) of the Act, 8 U.S.C. § 1182(i) and 212(h) of the Act, 8 U.S.C. § 1182(h) in order to remain in the United States to reside with his U.S. citizen wife.

The District Director concluded that the hardship that the applicant's U.S. citizen spouse would suffer did not rise to the level of extreme as required by statute. *District Director's Decision*, dated June 30, 2008. The AAO dismissed the applicant's appeal on November 29, 2010. The AAO determined that the applicant was also inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. The AAO concluded that the applicant was not eligible for a waiver of this inadmissibility under section 212(h)(1)(B) of the Act or a waiver of his inadmissibility due to his willful misrepresentation under section 212(i) of the Act because he did not demonstrate that his spouse would suffer extreme hardship upon relocation to Ghana.

On motion, counsel states that new facts, primarily the qualifying relative's second gynecological surgery, demonstrate that the applicant's spouse will, in fact, suffer extreme hardship if the applicant is not granted a waiver of inadmissibility. In support of the motion, counsel submitted a brief, a hardship statement from the qualifying relative and medical records.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4). The AAO reviews these proceedings de novo. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the motion. Counsel's submission meets the requirements for a motion to reopen, but not for a motion to reconsider.

The AAO's prior determination that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act shall be withdrawn. The applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed a crime involving moral turpitude, since he qualifies for the petty offense exception under section 212(a)(2)(A)(ii)(II) of the Act. The record shows that the applicant was convicted of "fraud in connection with identification documents" in violation of 18 U.S.C. § 1028(b)(3). The maximum penalty possible for the applicant's crime at the time of his conviction

did not exceed imprisonment for one year, 18 U.S.C. § 1028(b)(3) (1990), and the applicant was not sentenced to a term of imprisonment in excess of six months. The applicant was sentenced to probation for 18 months and no term of imprisonment was ordered. *United States v. Sarpong*, No. 90-434M-01 (D.C. Cir. Aug. 17, 1990) (judgment including sentence). Because the applicant is not inadmissible under section 212(a)(2)(A)(i)(I) of the Act, he does not require a waiver under section 212(h) of the Act.

However, the applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act for seeking an immigration benefit through willful misrepresentation. The record shows that the applicant attempted to obtain a U.S. passport by using another individual's birth certificate. The applicant concedes this inadmissibility on motion. A waiver is available to the applicant under section 212(i) of the Act dependent on his showing that the bar to his admission would impose extreme hardship on a qualifying relative. The applicant's U.S. citizen spouse is the qualifying relative. If extreme hardship to a qualifying relative is established and the applicant is statutorily eligible for a waiver, 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).

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.

We have previously found that the applicant’s spouse would suffer extreme hardship if she were separated from the applicant. We will now consider whether the applicant has presented new evidence to overcome our previous finding that his U.S. citizen spouse would not suffer extreme hardship if she were to relocate to Ghana with the applicant.

On motion, counsel asserts that the applicant’s spouse has had significant health issues and medical treatment since the appeal was filed and that the new evidence shows that she would suffer extreme hardship if she relocated to Ghana with the applicant. On February 4, 2010, the qualifying relative was seen by [REDACTED] at Mercy in Baltimore, Maryland regarding significant dysfunctional uterine bleeding and diffuse abdominal bloating. *Letter from* [REDACTED] dated February 4, 2010. The qualifying relative underwent a pelvic sonogram on November 5, 2009. *Id.* The qualifying relative had gynecological surgery on April 12, 2010. *Operative Report*, dated April 12, 2010. Although the qualifying relative’s condition had somewhat improved following the April 2010 surgery, a Bartholin gland cyst was found consistent with her history of endometriosis and dysfunctional uterine bleeding and she was prescribed medication. *Letter from* [REDACTED] dated August 17, 2010. Soon after the discovery of the Bartholin gland cyst, the qualifying relative was treated for menorrhagia. *Letter from* [REDACTED] dated September 7, 2010. The menorrhagia continued for several months. *Letter from* [REDACTED] dated December 7, 2010. The record indicates that the qualifying relative had a second surgery, marsupialization of the right Bartholin gland cyst, on February 8, 2012, which required follow-up care with her physician. *Pre-Operative Testing Report*, dated January 24, 2012; *Letter from* [REDACTED] dated February 20, 2012.

The new evidence shows that the qualifying relative has an ongoing, significant medical condition that has not been resolved and has required a second, recent surgery. Counsel states that the

applicant's spouse cannot move to Ghana at this stage as it would be adverse to her best health interests. *Brief on Appeal*. The record shows that the qualifying relative has received several years of specialized medical treatment with the same team of medical providers in the United States and the new evidence supports her claim of excessive difficulty obtaining proper medical care upon relocation to Ghana. *Medical Records*, dated 2010-2012; *Affidavit of Applicant's Wife*, dated December 27, 2010. Further, the record indicates that the qualifying relative lives in close proximity to her mother and does not have any family members in Ghana. On motion, the applicant has presented evidence of new facts that establish, when considered in the aggregate with the other relevant evidence, that the applicant's spouse would endure extreme hardship if she were to relocate to Ghana.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

In *Matter of Mendez-Moralez*, in evaluating whether relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record and, if so, its nature, recency and seriousness, and the presence of other evidence indicative of an alien's bad character or undesirability as a permanent resident of this country. . . . The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where the alien began his residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value and service to the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends, and responsible community representatives)...

Id. at 301. The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant must bring forward to establish a favorable exercise of administrative discretion is merited will depend in each case on the nature and circumstances of the ground of inadmissibility sought to be waived and on the presence of any additional adverse matters, and as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

The favorable factors in this matter are the extreme hardship the applicant's U.S. citizen spouse

would face if the waiver is not granted, the applicant's family ties in the United States, including his U.S. citizen daughter and mother and U.S. lawful permanent resident sister and two brothers, his gainful employment while in the United States, and his lack of a criminal record since 1990. The unfavorable factors in this matter are the applicant's fraud in connection with a U.S. passport application and his residence in the United States beyond his period of authorized stay.

The immigration violations committed by the applicant are serious in nature and cannot be condoned. Nonetheless, the AAO finds that the applicant has established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is warranted.

The applicant has provided evidence of new facts that illustrate his eligibility for a waiver of inadmissibility under section 212(i) of the Act. In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. After a careful review of the record, the AAO finds that in the present motion, the applicant has met his burden. Accordingly, the motion to reopen is granted, the prior decision of the AAO is withdrawn, the appeal is sustained, and the application will be approved.

ORDER: The motion is granted, the appeal is sustained and the waiver application is approved.