



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: FEB 04 2013

Office: ACCRA, GHANA

FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212 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 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, and is now before the Administrative Appeals Office (AAO) on 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 admission to the United States through fraud or the willful misrepresentation of a material fact. The applicant is married to a U.S. citizen, and is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). She 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 with her spouse.

In his decision of December 12, 2011, the Field Office Director concluded that the applicant had failed to establish that her spouse would experience extreme hardship as a result of her inadmissibility. Accordingly, the Form I-601, Application for Waiver of Grounds of Inadmissibility was denied.

On appeal, counsel asserts that the Field Office Director erred in finding that the denial of the waiver application would not result in extreme hardship. Counsel submits additional evidence for consideration.

The record includes, but is not limited to: statements from the applicant and her spouse; letters from the applicant's Ghanaian legal representative and her pastor; birth certificates for the applicant's children; income tax returns, W-2 Wage and Tax Statements, and earnings statements for the applicant's spouse; medical documentation relating to the applicant and her spouse; a utility billing statement; and documentation of eviction proceedings brought against the applicant's spouse. The entire record was reviewed and all relevant evidence considered in reaching this decision.

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.
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- (iii) Waiver authorized.-For provision authorizing waiver of clause (i), see subsection (i).

The record reflects that on September 28, 2000, the applicant attempted to enter the United States with a photo-substituted passport and was expeditiously removed. Accordingly, she is inadmissible under section 212(a)(6)(C)(i) of the Act, 8 USC § 1182(a)(6)(C)(i), for having sought admission to

the United States through fraud or the willful misrepresentation of a material fact.¹ The applicant does not contest her inadmissibility.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [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 would result extreme hardship for a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. In the present case, the applicant's only qualifying relative is her U.S. citizen spouse. Hardship to the applicant or her children can be considered only insofar as it results in hardship to her spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez*, 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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,

¹ The AAO notes that on her Form DS-230, Application for Immigrant Visa and Alien Registration, signed November 16, 2009, the applicant checked "no" in response to Question 32, which asked whether she had ever been refused admission to the United States. In that the applicant's admission is already barred by section 212(6)(C)(i) of the Act based on her September 28, 2000 presentation of a photo-substituted passport to an immigration officer, the AAO does not find it necessary to consider whether this second misrepresentation is a material misrepresentation under the Act.

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 BIA 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, the AAO considers the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

The applicant has not asserted that relocation to Ghana would result in extreme hardship for her spouse. Although counsel contends that Ghana has bad public health and education, and that the applicant’s children would benefit more from a U.S. education and have better health care in the United States, the applicant’s children are, as previously indicated, not qualifying relatives in this proceeding and the record does not indicate how any hardships they may be experiencing in Ghana are affecting their mother, the only qualifying relative. In the absence of clear assertions from the applicant, the AAO may not speculate as to what hardships the applicant’s spouse would encounter if he returns to Ghana. We, therefore, conclude that the applicant has failed to establish that her spouse would experience extreme hardship upon relocation.

Counsel, on appeal, asserts that the applicant and her spouse have three young children and that the applicant’s spouse cannot care for three children by himself. He also states that the applicant’s

spouse is experiencing financial stress because he is the only source of income for his family and must maintain two households, one in the United States and one in Ghana.

In her January 9, 2012 statement, the applicant asserts that she goes through unbearable trauma in answering her children's questions regarding when they will see their father. She states that she is caring for the two children she has had with her spouse, as well as his son from a previous marriage. Since giving birth to her youngest child on October 4, 2011, the applicant states that she has been unemployed and the family is surviving on the remittances sent by her spouse from the United States who clothes and feeds her and their three children, and pays for the children's school fees, uniforms, transportation, medical bills and all other expenses. She states that the cost of living for her and her children continues to go up and that the financial load is too heavy for her spouse. The applicant also maintains that she has not experienced a true marital life as her spouse has been residing in the United States for nearly ten years of their marriage.

In his statements, dated June 20, 2011 and January 9, 2012, the applicant's spouse asserts that he feels empty without his family in the United States; that he is facing financial hardship as he has to pay rent and overhead expenses in the United States, while sending money to his family in Ghana (for rent, medical, education and overhead expenses); that he previously worked double shifts and overtime to meet his expenses, but that he now cannot get the extra hours he once worked; that he was almost evicted from his place of residence before court intervention resulted in a payment plan; and that this situation could have been avoided if the applicant and their children had been with him in the United States. The applicant's spouse also states that because of his reduced financial circumstances, it has been difficult for his family to obtain good medical care in Ghana; that he experiences stress when he has to send money due to illness in his family; that he has been informed by his primary care physician that maintaining two households and not having his family with him poses a great risk to his health; and that he has been referred by his primary care physician for psychiatric evaluation, which he is currently undergoing. The applicant's spouse also states that educating his children in Ghana is placing pressure on him as it is very costly to send them to good schools.

The record contains a May 24, 2011 copy of a medical record from Dr. [REDACTED] which lists the applicant's spouse's medical problems as "Unspecified Essential Hypertension" and "Mixed Hyperlipidemia," and indicates that he is taking Crestor. The record also includes a January 6, 2012 statement from Dr. [REDACTED] in which he notes that the applicant's spouse is under his care and is currently "under stress b/o family condition," and that he has referred the applicant's spouse for mental health counseling.

To establish her spouse's financial circumstances, the applicant has submitted his pay stubs for the period March 31, 2011 through April 28, 2011, which report his net pay as \$1,027.87, \$1,106.46 and \$1,084.56. She has also provided a 2010 W-2 Wage and Tax Statement that indicates he earned \$34,134.45 and a Form 1040, U.S. Individual Income Tax Return, for 2010 that reflects he listed his nephew and niece as dependents for tax purposes. A copy of a December 1, 2011 utility bill is also found in the record, as are copies of eviction notices addressed to the applicant's spouse and a court record relating to his 2011 eviction proceedings.

While the AAO acknowledges the above documentation, we do not find it to establish that continued separation from the applicant would result in extreme hardship for the applicant's spouse. Although the applicant's spouse contends that he is experiencing financial hardship as a result of his need to maintain two households, no documentary evidence establishes this claim. Beyond the December 1, 2011 utility bill in the record, the applicant has provided no documentation of her spouse's financial obligations, including the rent payment plan the applicant's spouse indicates was established by the court in his eviction proceedings. We also find no documentary evidence that demonstrates the applicant's spouse is sending money to support the applicant and his children in Ghana. 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)). Accordingly, the record does not offer a clear picture of the applicant's spouse's financial circumstances.

We further find that while the medical record from Dr. [REDACTED] establishes that the applicant's spouse suffers from hypertension and hyperlipidemia, it does not address the severity of these conditions, indicate that they limit the applicant's spouse's ability to function or demonstrate that he requires any care or assistance. Moreover, although Dr. [REDACTED] January 6, 2012 statement indicates that the applicant's spouse is under stress and has been referred for mental health counseling, there is no mental health or other medical report in the record that evaluates the applicant's spouse's stress or establishes its impact on his mental or physical health. As a result, the AAO is unable to assess the extent of the applicant's spouse's medical problems, physical and/or emotional.

In that the record in the present case does not contain sufficient documentary evidence to support the hardship claims made on behalf of the applicant's spouse, the applicant has not established that her spouse would experience extreme hardship if the waiver application is denied and he remains in the United States.

The applicant has failed to establish extreme hardship to her U.S. citizen spouse as required for a waiver under section 212(i) of the Act. As the applicant has not established extreme hardship to a qualifying relative, no purpose would be served in determining whether she merits a waiver as a matter of discretion.

Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is upon the applicant to establish that she is eligible for the benefit sought. 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.