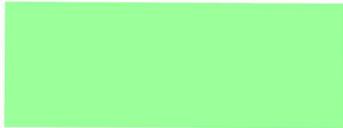


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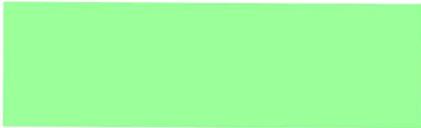
DATE: **MAR 12 2013** OFFICE: LAWRENCE, MA

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 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,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Lawrence, Massachusetts, a subsequent appeal was remanded to the Field Office Director, and then it was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, but the underlying application remains denied.

The applicant is a native and citizen of Ghana who has resided in the United States since February 23, 2005 when she presented a Belgian passport in the name of [REDACTED] which did not belong to her to procure admission into the United States. She 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 having procured admission to the United States through fraud or misrepresentation, and for having attempted to procure a visa through fraud or misrepresentation. The applicant was also found to be inadmissible under section 212(a)(9)(C)(i) of the Act for misrepresentations made in a 2004 nonimmigrant visa application. The applicant is the spouse of a U.S. Citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. 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 her U.S. Citizen spouse and children.

The Field Office Director concluded that the applicant failed to show her qualifying relative would experience extreme hardship given the applicant's inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated August 21, 2011.

The AAO affirmed, finding the record lacked sufficient evidence to demonstrate that the applicant's spouse would experience extreme hardship either in the event of separation from the applicant or relocation to Ghana. *See AAO Decision*, May 10, 2012.

On motion, counsel submits financial documents and a brief. In the brief, counsel contends the applicant is not inadmissible for her actions with respect to her visa application because she did not actually obtain the visa. Counsel further asserts that the applicant's spouse would experience extreme financial hardship upon separation, as well as emotional difficulties. Counsel moreover states that the applicant's spouse would experience hardship upon relocation to Ghana due to the adverse country conditions, the possibility of FGM for his daughter in Ghana, as well as medical and employment issues.

The record includes, but is not limited to, the documents listed above, evidence related to visa applications, statements from the applicant and her spouse, medical records, evidence on country conditions, employment, and medical care in Ghana, financial documents, letters from the community, evidence of birth, marriage, divorce, residence, and citizenship, other applications and petitions filed on behalf of the applicant, and photographs. The entire record was reviewed and considered in rendering a decision on the motion.

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

- (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.

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.

The Department of State's Foreign Affairs Manual [FAM] provides, in pertinent part:

Materiality does not rest on the simple moral premise that an alien has lied, but must be measured pragmatically in the context of the individual case as to whether the misrepresentation was of direct and objective significance to the proper resolution of the alien's application for a visa....

"A misrepresentation made in connection with an application for a visa or other documents, or with entry into the United States, is material if either:

- (1) The alien is excludable on the true facts; or
- (2) The misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might have resulted in a proper determination that he be excluded." (Matter of S- and B-C, 9 I&N 436, at 447.)

*DOS Foreign Affairs Manual, § 40.63 N. 6.1.* Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I. & N. Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I. & N. Dec. 409 (BIA 1962; AG 1964) and *Matter of S- and B-C-*, 9 I. & N. Dec. 436 (BIA 1950; AG 1961).

To establish eligibility for a non-immigrant B1/B2 visa, section 101(a)(15) of the Act states, in pertinent part:

- (B) an alien...having a residence in a foreign country which he has no intention of abandoning and who is visiting the United States temporarily for business or temporarily for pleasure.

The FAM further provides:

The applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin.

*DOS Foreign Affairs Manual, § 41.31 N. 3.4.* Although the AAO is not bound by the Foreign Affairs Manual, it finds its analysis to be persuasive.

On motion, counsel does not contest the applicant's inadmissibility due to her misrepresentation on February 23, 2005, when she presented a Belgian passport which did not belong to her to procure admission into the United States. However, counsel asserts that the applicant is not inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for falsely representing that she was married to a Ghanaian citizen who would finance her trip in a 2004 application for a nonimmigrant visa. Counsel contends that because the applicant did not actually receive the visa, she did not make a material misrepresentation. This contention is without merit. The statute does not require that the applicant procure the visa in order for inadmissibility to apply; section 212(a)(6)(C) of the Act states that an alien is inadmissible if she "seeks to procure (or has sought to procure or has procured) a visa" through fraud or misrepresentation of a material fact. Section 212(a)(6)(C) of the Act (emphasis added). Counsel moreover references *Kungys v. United States*, 485 U.S. 759 (1988) as support for the claim that the misrepresentation was not material because she did not procure the immigration benefit she sought. However, counsel's reliance on *Kungys* as support for that specific assertion is misplaced. In *Kungys*, the U.S. Supreme Court outlined the test to determine whether a misrepresentation is material, which is set forth above. Unlike the present case, where a determination of admissibility under section 212(a)(6)(C) of the Act is required to evaluate the applicant's eligibility to adjust status or obtain an immigrant visa, the Supreme Court in *Kungys* analyzed whether an alien who had become a naturalized citizen could have his naturalization revoked under section 340 of the Act. Section 340 of the Act requires an alien to have procured a benefit, namely, naturalization, in order for revocation to occur, whereas the plain language of section 212(a)(6)(C) of the Act also applies to aliens who seek to procure, or has sought to procure a visa, other documentation, admission, or another benefit under the Act.

In the present case, the applicant sought to procure a nonimmigrant visa by misrepresenting her marital status, and therefore, her ties to Ghana. The applicant is consequently inadmissible under section 212(a)(6)(C)(i) of the Act for having sought to procure a visa through misrepresentation of a material fact, in addition to her misrepresentation of her identity while procuring admission in 2005. The applicant's qualifying relative for a waiver of inadmissibility is her U.S. Citizen spouse.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of

whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (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 v. I.N.S.*, 138 F.3d 1292 (9th Cir. 1998) (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 motion, counsel asserts that the applicant's spouse suffers from financial hardship. Counsel explains that the spouse lost his job in March 2012, and that his unemployment benefits are not sufficient to meet his financial obligations. A letter on COBRA benefits, a household budget, and copies of monthly bills are submitted in support. Counsel adds that, if the applicant returned to Ghana and the children remained in the United States, child care expenses would further exacerbate the spouse's financial difficulties. A copy of an agreement with a child care facility is submitted, indicating that child care would cost \$250 per week. Counsel moreover states that if the children were to remain in the United States, raising them would be very difficult as a single parent. Counsel additionally claims that the separation may lead to emotional difficulties and possibly divorce between the applicant and her spouse, which is an extreme hardship.

Counsel contends that the children may still be subject to female genital mutilation (FGM) in Accra, Ghana, despite the information contained in the U.S. Department of State's Human Rights Report. Counsel asserts that the Human Rights Report does not indicate that FGM absolutely does not take place in Accra, but that FGM is more prevalent in other areas. Counsel adds that Accra has people from all Ghanaian tribes, who practice their traditional rituals wherever they go. Counsel claims that the applicant's spouse, who was born in Ghana but is now a U.S. Citizen, is considered a foreigner in Ghana, and would have to obtain a work permit or a visa to live there. On appeal, counsel asserted that the spouse would have difficulty finding employment in Ghana and meeting his financial obligations. Counsel moreover reiterates on motion that the applicant's spouse is at risk of death if he returns to Ghana due to his high blood pressure, and that he and the children are also at risk of disease in Ghana.

The record contains sufficient evidence of financial hardship. The applicant has supplemented the record with documentation showing he lost his job in 2012, and that his documented expenses exceed his income. Moreover, copies of household expenses indicate that the applicant's spouse has had difficulty paying his bills in a timely manner. The applicant has also demonstrated that paying for child care would be difficult given his unemployment income from the Massachusetts Department of Workforce Development. As such, the applicant has established that her spouse experiences financial difficulties.

The record additionally indicates that upon separation, the applicant's spouse would either take care of the two young children in the United States, or that he would be separated from them if they returned to Ghana with the applicant. The resulting hardship would add to the spouse's

emotional difficulties upon separation from the applicant herself. In light of this and the documented financial hardship, the AAO finds there is sufficient evidence of record to demonstrate that the spouse's hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record establishes that the financial, emotional, or other impacts of separation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO concludes that he would suffer extreme hardship if the waiver application is denied and the applicant returns to Ghana without her spouse.

However, the applicant has failed to submit sufficient evidence to demonstrate that the applicant's spouse, a native of Ghana, would experience extreme hardship upon relocation. Counsel makes assertions on motion with respect to FGM in Accra, Ghana, and the spouse's immigration problems in Ghana. However, the record contains no documentary evidence in support of counsel's assertions. Without supporting evidence, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. See *Matter of Obaighena*, 19 I&N Dec. 533, 534 n.2 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1, 3 n.2 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Given the lack of supporting evidence, the AAO is unable to give significant weight to counsel's assertions.

The AAO again notes that the applicant's spouse may have difficulty obtaining the same level of medical care for in Ghana, and finding adequate employment there. However, though he may face some difficulties, the AAO does not find evidence of record to demonstrate that his hardship would rise above the distress commonly created when families relocate as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, medical, or other effects of relocation on the applicant's spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot find that the applicant's spouse would experience extreme hardship if the waiver application is denied and he relocates to Ghana with the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation *and* the scenario of relocation. A claim that a qualifying relative will remain in the United States and thereby suffer extreme hardship as a consequence of separation can easily be made for purposes of the waiver even where there is no intention to separate in reality. See *Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to separate and suffer extreme hardship, where relocating abroad with the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, see also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from relocation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relative in this case.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has

failed to establish extreme hardship to her U.S. Citizen spouse as required under section 212(i) of the Act. 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.

In proceedings for a waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, although the motion is granted, the underlying application remains denied.

**ORDER:** The motion is granted, but the underlying application remains denied.