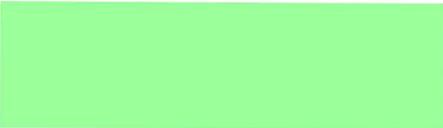




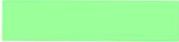
U.S. Citizenship  
and Immigration  
Services

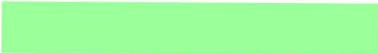
(b)(6)



Date: **MAR 25 2013**

Office: BALTIMORE

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-  
Ron Rosenberg

Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Baltimore, Maryland. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native 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 procuring admission to the United States through fraud or misrepresentation. The applicant entered the United States on March 8, 2001, using a passport belonging to another person. The applicant does not contest this finding, but rather seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to reside in the United States with his U.S. citizen spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *See Decision of the District Director, April 20, 2012.*

The record contains the following documentation: a statement on the Form I-290B, Notice of Appeal or Motion; letters submitted by the applicant's attorney; statements from the applicant and the applicant's spouse; financial documentation; a psychological evaluation of the applicant's spouse; medical documentation for the applicant's son; and letters of reference. The entire record was reviewed and considered in rendering a decision on the appeal.

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 that:

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 or, in the case of an alien granted classification under clause (iii) or (iv) of section 204(a)(1)(A) or clause (ii) or (iii) of section 204(a)(1)(B), the alien demonstrates extreme hardship to the alien or the alien's United States citizen, lawful permanent resident, or qualified alien parent or child.

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. The applicant's U.S. citizen spouse is the only qualifying relative in this case. Under this provision of the law, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship. 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 v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1993), (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9<sup>th</sup> 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.

Counsel contends that the applicant's spouse will suffer financial hardship if the applicant's waiver is not approved. The record indicates that the applicant's spouse is a geriatric nursing assistant working at a nursing facility and earns a salary of \$16.00 per hour. Financial documentation in the record indicates that the adjusted gross income for the applicant's spouse in 2010 was \$30,374.00. There is no evidence in the record to conclude that the qualifying spouse is unable to meet her financial obligations in the applicant's absence. Courts considering the impact of financial detriment on a finding of extreme hardship have repeatedly held that, while it must be considered in the overall determination, "[e]conomic disadvantage alone does not constitute "extreme hardship." *Ramirez-Durazo v. INS*, 794 F.2d 491, 497 (9<sup>th</sup> Cir. 1986).

Counsel asserts that the applicant's spouse will suffer psychological hardship if the applicant's waiver is not approved. The record includes a report of psychological evaluation for the applicant's spouse issued by a licensed psychologist on February 13, 2012. The psychological evaluation states that while the applicant's spouse shows degrees of anxiety and dysphoria, these are at a level and sort appropriate to the stress of her situation, and that the applicant's spouse shows no personality-based pathology and shows neither an effort to look more positive or more problematic than she is. The psychological report does not indicate that the applicant's spouse is suffering from psychological problems, but rather focuses on the potential effects of removal of the applicant from the United States, and the impact that such removal would have on the applicant's spouse.

The record includes documentation attesting that the applicant's son, born July 9, 2011, has been diagnosed with Glucose 6 Phosphate Dehydrogenase Deficiency (G6PD). As noted above, under section 212(i) of the Act, children are not deemed to be "qualifying relatives." However, although children are not qualifying relatives under this statute, USCIS does consider that a child's hardship can be a factor in the determination whether a qualifying relative experiences extreme hardship.

A medical report included in the record, dated August 15, 2011, indicates that the applicant's son was diagnosed with G6PD shortly after birth, and states that it is extremely important that the child

is not exposed to certain foods, especially certain beans, and certain substances like naphthalene found in mothballs, and cannot take certain medications, and that if he is exposed, he can have a breakdown in red blood cells leading to jaundice, severe anemia, heart failure, and possibly death. Medical documentation on G6PD included in the record indicates that G6PD does not go away and is a lifelong condition; however, the documentation further notes that most people with G6PD have a completely normal life as long as they avoid certain food and drugs. There is no evidence in the record that the applicant's spouse would be unable to assure that her son is not exposed to the foods and medications that need to be avoided in the absence of the applicant.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen spouse will face extreme hardship if the applicant is unable to reside in the United States. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation, if she remains in the United States, is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record. The difficulties that the applicant's spouse would face as a result of her separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

In regard to the applicant's spouse relocating to Ghana to reside with the applicant, the AAO notes that the applicant's spouse was born in Ghana, and is familiar with the language and customs in Ghana. However, the record does indicate that there would be medical risks associated with the applicant's son, who is afflicted with Glucose 6 Phosphate Dehydrogenase Deficiency (G6PD), if the applicant's spouse and children were to relocate to Ghana. The medical documentation in the record notes that all known anti-malarial drugs are contra-indicated for G6PD individuals, and that malaria exists in West Africa and Ghana.

The record thus establishes that if the waiver application were denied, the hardships that the applicant's spouse would face were she to relocate to Ghana, particularly the medical risks to the applicant's son, and the concerns that the applicant's spouse would have in view of these risks, rises to the level of extreme.

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 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.

(b)(6)

In proceedings for an application for waiver of grounds of inadmissibility, the burden of establishing that the application merits approval rests with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden. Accordingly, the appeal will be dismissed

**ORDER:** The appeal is dismissed. The waiver application is denied.