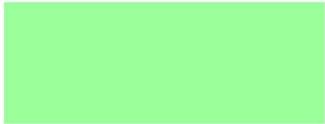


(b)(6)

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

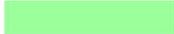


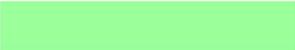
**U.S. Citizenship
and Immigration
Services**



DATE: **NOV 12 2013**

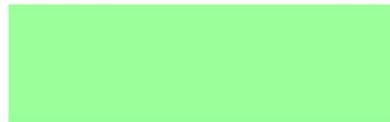
Office: NEWARK

File: 

IN RE: Applicant: 

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, denied the waiver application, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and a 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 procuring or attempting to procure a visa and admission to the United States by fraud or misrepresentation. The applicant seeks a waiver of inadmissibility in order to remain in the United States as the beneficiary of the approved Petition for Alien Relative (Form I-130) filed by his wife.

The field office director found that the applicant failed to establish that the bar to his admission would result in extreme hardship to his U.S. citizen wife and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Field Office Director*, March 2, 2013.

On appeal, the applicant contends that USCIS erred in finding his wife would not suffer extreme hardship as a result of the applicant's inadmissibility if he is unable to remain in the United States. In support of the appeal, the applicant submits documentation including: medical progress notes; prescription drug information; an updated hardship statement; copies of birth and marriage certificates and of a passport; financial documents, including tax returns, an apartment lease, collection notices, and a credit rating; and photographs. The record also includes an earlier psychological note, statements from the qualifying relative and the applicant, prior year's tax returns, and various immigration applications. The entire record was reviewed and considered in rendering this decision.

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

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)(1) of the Act provides:

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 record shows that, on September 29, 2001, the applicant procured U.S. admission with a B2 visitor visa. On his visa application, he stated he had been married since 1998 in Ghana. When he later sought immigration benefits as the spouse of a U.S. citizen, USCIS determined his 1998

marriage had never occurred, the false claim represented an attempt to procure a visa by fraud, and he was thus inadmissible. The applicant initially disputed having engaged in fraud, but has since admitted responsibility for the misrepresentation. He requires a waiver of this inadmissibility in order to adjust status to that of lawful permanent resident and remain here with his wife and family.

A waiver of inadmissibility under section 212(i)(1) 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 or his children 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. 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-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 applicant has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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; the Board added that not all of these factors need be analyzed in any given case and emphasized that the list is 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, while 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, or cultural readjustment 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, although 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 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); conversely, *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 case-by-case whether denial of admission would result in extreme hardship to a qualifying relative.

Regarding whether the applicant has established that his wife would suffer extreme hardship by relocating to Ghana, the record reflects that her relatives in the United States include her five children (between the ages of 2 and 19) and her mother, she was born and raised in this country, and she has never traveled abroad. She claims to be unable to move overseas because the father of her two minor children (ages 11 and 14) from a prior marriage will not permit them to leave and because her youngest child suffers from a chronic lung disease that would worsen in Ghana, and states she is taking prescription medication for depression and anxiety. Although the record contains no documentation concerning the legal custody of the wife's children from her prior marriage, there is evidence on record that she has been treated for depression and has a child with a serious lung condition. Physician notes confirm the two-year-old's diagnosis with asthma, bronchopulmonary dysplasia, and related allergic conditions and her current treatment with prescription inhaled steroids and other bronchodilators. *See Supplemental Security Income—Notice of Award*, Social Security Administration, October 22, 2012. The applicant's wife is afraid of the adverse consequences to her child's health and unavailability of medications commonly prescribed here. U.S. government reporting regarding medical care substantiates the qualifying relative's concerns about health and safety risks in Ghana, including lack of U.S. standard care, exposure to Tuberculosis, unavailability of prescription medication, and street violence. *See Ghana—Country Specific Information*, Department of State (DOS), March 28, 2013.

Based on the totality of the circumstances, the evidence is sufficient to establish that a qualifying relative would experience extreme hardship by moving to Ghana as a result of concern for her family's security, worries about unavailability of mental health care, and fear that her youngest child's lung disease will worsen without ready access to care and treatment. Further, relocating would limit contact with her children from a prior marriage currently living with their father.

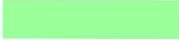
Regarding the claim of emotional hardship due to separation from the applicant, the qualifying relative claims a history of psychiatric problems beginning with a 2006 bout of depression resulting

from marital problems. Documentation consists of a brief letter confirming that a doctor diagnosed the applicant's wife with depression after a March 2006 office visit. The letter fails to list any symptoms, tests, or treatment recommendations, and the record reflects that the depression lifted shortly after the office visit, when she met the applicant. The qualifying relative claims her problems resurfaced as anxiety, depression, and chest discomfort related to stress due to the applicant's uncertain immigration status. In support of these assertions, she submits copies of her medical records consisting of physician's "progress notes" for medical care from 2010 and 2013 and laboratory results. The evidence on record is insufficient to establish that the applicant's wife suffers from such conditions and, if so, their severity and prognosis. The records, including handwritten progress notes, contain medical terminology and abbreviations that are not easily understood and lab results that are not explained. They were prepared for review by medical professionals or are otherwise illegible or indiscernible and do not contain a clear explanation of the current condition of the applicant's wife.

Regarding the financial component of separation hardship, the applicant's wife claims her husband became the primary wage earner when she stayed home to nurse her youngest child, who was born in March 2011. There is evidence that, until then, she and the applicant each earned between \$35,000 and \$50,000 annually. She claims they share parenting responsibilities, but asserts she would be unable to maintain her full time job as a licensed practical nurse without her husband's presence. There is no indication she has investigated childcare options that would permit her to continue working as a single parent. She asserts the applicant would be unable to support two households from Ghana, due to the employment situation there, but provides no supporting evidence. In addition, she claims that her poor credit history will make it difficult for her economically without the applicant's income contribution and provides copies of delinquent bills and collection agency demands from 2011 as evidence of her situation. There is no updated evidence of her financial situation on record. And, while the applicant's wife states that her older children visit her and have a good relationship with her husband, the record does not show she has any financial responsibility for them, but rather that they reside with her former husband.

For all these reasons, the cumulative effect of the hardships the applicant's wife and children will experience due to his inadmissibility do not rise to the level of extreme. We are sensitive that the applicant's inability to remain in the United States will impose some hardship on his wife and family. The AAO concludes, however, based on the evidence provided that, were his wife to remain in the United States without the applicant due to his inadmissibility, she would not suffer extreme hardship beyond those problems normally associated with family separation.

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 in 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.

The documentation on record, when considered in its totality, reflects the applicant has not established that his spouse will suffer extreme hardship if he is unable to live in the United States. The AAO recognizes that the applicant's wife will endure hardship as a result of the applicant's inability to immigrate. However, her situation is typical of individuals affected by removal or inadmissibility, and the AAO thus finds that the applicant has failed to establish extreme hardship to his wife as required under the Act.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.