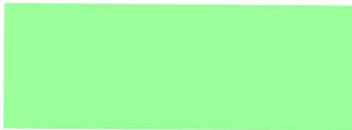


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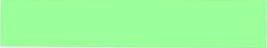
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
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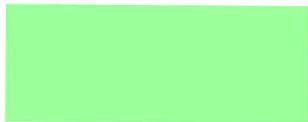


DATE: **NOV 15 2013** Office: LAWRENCE File: 

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,



Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Acting Field Office Director, Lawrence, Massachusetts, 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 admission and other immigration benefits by fraud or misrepresentation. The applicant seeks a waiver of inadmissibility in order to remain in the United States as the beneficiary of an approved Petition for Alien Relative (Form I-130).

The acting field office director found that the applicant failed to establish that the bar to his admission would result in extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), accordingly. *Decision of the Acting Field Office Director*, March 20, 2013.

On appeal, the applicant contends that USCIS failed to give adequate weight to the hardships that his qualifying relative will suffer as a result of the applicant's inadmissibility if he is unable to remain in the United States. In support of the appeal, counsel for the applicant submits a letter and updated medical information. Documentation on record includes, but is not limited to: a psychological evaluation; medical reports; hardship statements and supportive statements; copies of birth, marriage, divorce, and naturalization certificates; financial evidence, including tax returns; and legacy INS policy memoranda. The record also includes earlier financial records, various immigration applications, and information regarding the applicant's criminal record. 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 the applicant claims to have last entered the United States on May 14, 1990¹ using a fraudulent Ghanaian passport issued to another person. Immigration records further reflect that since entering the country, he has made further material misrepresentations, including: claiming to be a Liberian citizen when applying for Temporary Protected Status (TPS) in 1993; claiming to be a U.S. citizen in 1995 when registering to vote; and on his 2007 and 2012 adjustment applications, failing to divulge assigned A-numbers and his 2006 criminal conviction. The applicant is thus inadmissible under section 212(a)(6)(C)(i) of the Act and requires a waiver of inadmissibility.

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 lawful permanent resident mother 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).

¹ He also claims to have entered on and June 21, 1990 (without inspection) and January 22, 1991 (in nonimmigrant status by unspecified means).

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.

The record reflects that the applicant’s mother is a 79-year-old widow who immigrated from Ghana in 2011 to join the five of her six living children residing here; that four of her children live nearby, including the applicant; and that she suffers from several medical conditions, including type 2 diabetes, hypertension, and clinical depression. Medical reports establish that she takes insulin and medication for diabetes and medication for high blood pressure, has had surgery for cataracts in both eyes, has been diagnosed with a painful shoulder condition, and receives frequent monitoring of these conditions by her primary care physician and specialist doctors. Relocating to her home country would sever ongoing relationships with her treatment providers, and there is evidence she would have diminished access to adequate care and treatment including prescription medication. *See Ghana—Country Specific Information*, U.S. Department of State, March 28, 2013. A psychologist reports the qualifying relative has a more than 25-year history of depressive illness and recommends psychiatric consultation regarding possible anti-depression medication or nonpharmacological options such as counseling.

The applicant’s mother claims to have a close relationship with the applicant, due to his being her only son nearby and to his role in advising and resolving disputes for the family. The record reflects that both mother and son have a history of depression, the applicant being hospitalized for several months in Europe with an abdominal knife wound due to concerns that the injury was self-inflicted, and the applicant, too, takes insulin and other medication for diabetes. A daughter states that the qualifying relative was hospitalized three times in Ghana for diabetic comas due to poor monitoring

of her blood glucose levels and the unreliability of the availability and quality of medications. DOS reporting regarding the limited medical care in Ghana supports the qualifying relative's claim that both she and the applicant will lack access to necessary treatment options in their home country.

Based on the totality of the circumstances, the evidence is sufficient to establish that a qualifying relative would experience extreme hardship by moving back to Ghana as a result of loss of contact with her health care providers, worries about unavailability of her prescribed medicines and of mental health care, and medical care below U.S. standards. Further, relocating would deprive the applicant's mother of contact with her immediate family members, all but one of whom live in the United States.

Regarding the claim of emotional hardship due to separation from the applicant, the evidence shows that the qualifying relative has a history of psychiatric problems, including episodes of clinical depression starting with the applicant's 1988 hospitalization for stabbing injuries while overseas. The psychologist's report supports the assertion by the applicant's sisters that their mother's recovery from this first bout of depression led to strengthening of her bond with the applicant when he returned to Ghana. *See Psychological Evaluation*, July 18, 2011. According to the report, after her husband and mother died within two months of each other in 1993, the applicant's mother suffered a return of her depressive symptoms, which recurred again upon her daughter's death in 1995, and returned in 2011 due to fears about the applicant's immigration status. Each episode was characterized by the same symptoms the psychologist found her to be experiencing in 2011 for fear of losing her son, including insomnia, anxiety with panic attacks, body pains, appetite and weight loss, lack of concentration, and sadness. The record reflects that she worries the applicant, who has also been diagnosed with depression, diabetes, and hypertension, will be adversely impacted by the same medical shortcomings his mother would suffer in Ghana. *Id.* As concern for the applicant's health causes his mother stress that worsens her physical and emotional conditions, the negative impact of separation on the applicant's health is relevant to determining hardship to his mother. There is evidence that the applicant supplements monthly medical monitoring and treatment of his mother's diabetes and hypertension by visiting her daily to take her blood pressure, measure her blood glucose level, remind her to take her medication, and take her to doctor appointments. Due to her health problems and lack of financial resources, the qualifying relative appears unable to visit her son overseas to ease the pain of separation.

For all these reasons, the cumulative effect of the physical and emotional hardships the applicant's mother is likely to experience due to the applicant's inadmissibility rises to the level of extreme. The AAO concludes based on the evidence provided that, were his mother to remain in the United States without the applicant due to his inadmissibility, she would suffer hardship beyond those problems normally associated with family separation.

The documentation on record, when considered in its totality, reflects the applicant has established that his mother would suffer extreme hardship were the applicant unable to reside in the United States. Accordingly, the AAO finds that the situation presented in this application rises to the level of extreme hardship. However, the grant or denial of the waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Secretary and pursuant to

such terms, conditions and procedures as she may by regulations prescribe. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957):

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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).

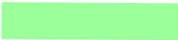
See Matter of Mendez-Moralez, 21 I&N Dec. 296, 301 (BIA 1996).

The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The favorable factors in this matter are the extreme hardships the applicant's mother will face if the applicant returns to Ghana, regardless of whether she joins the applicant there or remains here; supportive statements; the applicant's 23-year residence in the United States; and history of gainful employment. The unfavorable factors in this matter concern the applicant's arrival without valid documentation, attempted fraudulent entry, repeated misrepresentations when attempting to procure immigration benefits, and criminal convictions.

The record reflects the applicant has made misrepresentations to government authorities since 1993. He applied for TPS as a Liberian using a false name and date of birth. When applying for adjustment of status, he failed to disclose the TPS application during his adjustment interview and he misrepresented the manner and dates of his U.S. entries. When registering to vote, he falsely claimed to be a U.S. citizen, and he later testified falsely about having registered to vote. Regarding his criminal record, he has not provided evidence of genuine rehabilitation. The record shows he failed to disclose on either his 2007 or his 2012 adjustment application a 2006 conviction for driving with a suspended license, that he was previously convicted in 1997 of harassment, and that he denied in a 2010 sworn statement even having filed the fraudulent TPS application.

(b)(6)



Page 7

NON-PRECEDENT DECISION

The applicant's repeated violations of the immigration laws cannot be condoned or excused, as the negative factors in this case outweigh the positive factors. Given the equities involved, the AAO finds that a favorable exercise of discretion is not warranted.

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.