



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

(b)(6)

DATE: **OCT 02 2013** OFFICE: BALTIMORE, MD

FILE: [REDACTED]

IN RE: APPLICANT: [REDACTED]

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 (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 that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Baltimore, Maryland, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, but the prior AAO decision will be affirmed. The underlying application remains denied.

The applicant is a native and citizen of Ghana who has resided in the United States since April 13, 1997, when he presented a United Kingdom passport which did not belong to him in an attempt to procure admission into the United States. He 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 attempted to procure admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved 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 his U.S. citizen spouse and children.

The District Director concluded that the applicant failed to demonstrate the existence of extreme hardship to a qualifying relative and denied the application accordingly. *See Decision of District Director* dated August 14, 2012.

The AAO dismissed a subsequent appeal, finding although the applicant established his spouse would experience extreme hardship upon separation, he did not show she would suffer such hardship upon relocation. *See AAO Decision*, July 11, 2013.

On motion, counsel submits a brief, a statement from the applicant's spouse, an updated psychological evaluation, medical and financial documents, articles on the nursing profession and the availability of medicine in Ghana, and a United Nations Development Programme report. In the brief, counsel contends the newly submitted evidence proves the applicant's spouse, a registered nurse, could not find a job in Ghana, that country conditions in Ghana are poor, and the applicant's son would be unable to access necessary medicine and medical care.

The record includes, but is not limited to, the documents listed above, statements from the applicant and his spouse, financial and medical records, letters from family and friends, psychological evaluations, documentation of birth, marriage, residence, and citizenship, other applications and petitions, and documentation of criminal and removal proceedings. 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.

In the present case, the applicant admitted in a sworn statement that on April 13, 1997, he presented a United Kingdom passport in the name of [REDACTED] in an attempt to procure admission into the United States. The applicant was subsequently paroled in to pursue an application for asylum. Inadmissibility is not contested on appeal. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. The applicant's qualifying relative is his U.S. citizen spouse.<sup>1</sup>

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.

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<sup>1</sup> The record also shows the applicant was arrested for possession of marijuana in 2000. The record further reflects that he may have been convicted of this offense; however, the relevant criminal records have since been expunged. The District Director did not address whether or not the applicant is consequently inadmissible under section 212(a)(2)(A)(i)(II) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is inadmissible under section 212(a)(2)(A)(i)(II).

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.

Counsel contends the applicant's spouse would be unable to find employment as a registered nurse in Ghana. In support, counsel submits an email message from the spouse's sister, who states that even if the spouse found a job, she would earn only \$245 a month in Ghana, which would not be enough to support the family. The sister moreover claims that nurses are on strike because they are not paid regularly. The spouse's sister adds that she and other family members will not be able

to help the spouse financially, and that medical care in Ghana will be inadequate for [REDACTED]'s medical conditions. Articles titled "Nurses Cry Out Over Unpaid Salaries" and "Nurses Threaten to Join Strike" are submitted in support. The spouse contends the cost of living in Ghana is high, and with such a limited income, moving to Ghana would be suicidal for the family.

The spouse moreover asserts that their son [REDACTED] would suffer in Ghana due to a lack of affordable medical care and medicine there. She indicates it is well known in the medical community that Ghana has constant medication shortages for the treatment of asthma. The spouse states that if they relocate to Ghana they will not be able to provide the constant supervision that [REDACTED] needs. She contends they provide alternating supervision of [REDACTED] and the applicant monitors his condition while she is working at night. The son's medical services office confirms in a letter that the son is under professional care for asthma, allergic rhinitis, and dermatitis. The office adds that relocating to Africa would be detrimental for the son because of the diagnosis and his need for pulmonology, ENT, and dermatology. The spouse additionally claims that she owns a home in Maryland, and that relocating to Ghana would mean they would have to give up their house. Mortgage statements are submitted on motion. An updated psychological evaluation discusses the emotional impact of a forced separation on the applicant's spouse.

The AAO found on appeal that the spouse would experience extreme hardship upon separation from the applicant. There is no indication of record that this finding should be overturned. Therefore, the AAO confirms the applicant has demonstrated his spouse would experience extreme hardship upon separation.

However, the applicant has failed to demonstrate on motion that his spouse would experience extreme hardship upon relocation. The letter from the medical services office confirms that their son [REDACTED] has asthma, allergic rhinitis, and dermatitis. The applicant has also submitted evidence demonstrating that certain medications are relatively expensive in Ghana. However, the record does not contain evidence on what medications [REDACTED] takes on a regular basis. The son's Pediatric general instructions, dated May 30, 2010, indicates he has reactive airway disease, and that he is required to take albuterol and orapred for nine days. The applicant has not submitted any documentation from a medical services provider reflecting what medications the son takes on a regular basis, if any, or what specific services and treatments he will require in the future. The medical services office also does not indicate that the son requires around the clock monitoring, as the spouse suggests. Without such documentation, the AAO cannot conclude that the son will be unable to access required medication or medical care in Ghana.

Furthermore, the applicant has not demonstrated that his spouse will be unable to find adequate employment as a nurse in Ghana, or that she will be unable to meet her financial obligations in that country. The spouse's sister indicates in an email that the spouse will have difficulty finding a nursing job in Ghana and that her income will be insufficient. However, the applicant has not established that his spouse's sister has the credentials to provide an objective analysis on the nursing market in Ghana, nor does the applicant provide the evidence the sister is basing her opinions on. Without this information, the AAO can give limited weight to the sister's assertions. Furthermore, the two articles submitted do not demonstrate that the spouse will have difficulty

finding employment in Ghana. The author of the article “Nurses Cry Out Over Unpaid Salaries” states that nurses from public nursing institutions draw a regular salary while nurses from private institutions have not been paid for two years. The author of “Nurses Threaten to Join Strike” also does not discuss difficulty finding employment, but rather indicates that nurses may join doctors in a strike. As there is no objective evidence on point, the AAO cannot find the applicant has submitted sufficient evidence to demonstrate his spouse would have difficulty finding employment in Ghana.

The applicant has also failed to submit evidence establishing that his spouse would be unable to meet her financial obligations in Ghana. Although the applicant has shown that he and his spouse have a mortgage, he has not demonstrated that they would be unable to sell or rent the property if they relocated to Ghana. Furthermore, there is no documentation on the applicant’s potential income in Ghana, and the spouse’s assertions that the cost of living in Ghana is too high are unsupported by evidence of record. Although these assertions are relevant and have been taken into consideration, little weight can be afforded them in the absence of supporting evidence. See *Matter of Kwan*, 14 I&N Dec. 175 (BIA 1972) (“Information in an affidavit should not be disregarded simply because it appears to be hearsay; in administrative proceedings, that fact merely affects the weight to be afforded it.”). 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)).

The record reflects that relocation would entail separation from the spouse’s family and other ties in the United States, as well as some difficulty adjusting to life in Ghana. However, the record does not reflect that the spouse, a native and 20 year resident of Ghana, would face hardship above that which is commonly experienced by relatives of inadmissible aliens who relocate. Because the record lacks sufficient evidence demonstrating the emotional, financial, or other impacts of relocation on the applicant’s spouse are cumulatively above and beyond the hardships normally experienced, the AAO cannot find the spouse would experience extreme hardship upon relocation to Ghana.

As noted on appeal, 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 the applicant has failed to establish extreme hardship to his 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 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 motion is granted, but the prior AAO decision is affirmed.