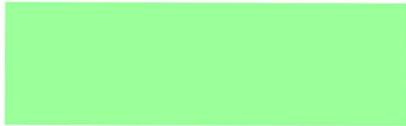




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **SEP 11 2013**

Office: WASHINGTON, DC

FILE: 

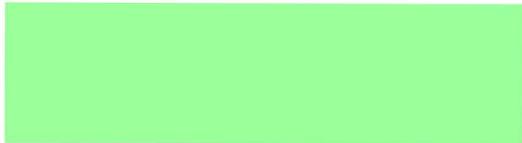
IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 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 Field Office Director, Washington, DC, 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 citizen of Ghana who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a lawful permanent resident and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant established extreme hardship to his wife, particularly considering she suffers from sickle cell anemia and their children carry the sickle cell trait. Counsel submits additional evidence in support of the waiver application on appeal.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating they were married on September 30, 1989;¹ statements from articles discussing sickle cell anemia; and copies of medical records. The entire record was reviewed and considered in rendering this decision on the appeal.

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

In general.—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) provides, in pertinent part:

- (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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

¹ The AAO notes that the field office director questioned the validity of the applicant's marriage certificate in her decision denying the applicant's Form I-485, but nonetheless considered to be a qualifying relative under the Act for purposes of the applicant's waiver application. The AAO notes that the marriage certificate contained in the record indicates that they were married on September 4, 1993, when the applicant claims he was in the United States. No explanation has been provided for this discrepancy. This should be examined in any future proceedings.

immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien

In this case, the record shows, and counsel does not contest, that the applicant claims to have entered the United States in April 1991 using a fraudulent passport and that the applicant also attempted to obtain Temporary Protected Status by falsely claiming he is from Liberia. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

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*, 138 F.3d at 1293 (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.

In this case, the applicant's wife, [REDACTED], states that she and her husband have been married since 1993, have three children together, and have lived in the United States for over twenty years. She contends she would suffer emotionally, psychologically, and economically if his waiver application is denied. [REDACTED] contends they are a two-income family. In addition, [REDACTED] states she has been diagnosed with sickle cell anemia and has been hospitalized for infections, aches, and pains. She also contends she has had surgery for gynecological problems and has suffered low blood counts, requiring a blood transfusion. [REDACTED] states her husband takes her to doctor's appointments, hospital visits, laboratories for blood work, and physical therapy sessions. She states he gives her the care she needs, and emotional support and assistance. Moreover, [REDACTED] states that their son, David, has respiratory problems and is under the care of a pulmonary doctor. He has also reportedly had surgery for testicular issues and, according to [REDACTED] all three children have the sickle cell trait for which they need to be followed closely. Furthermore, [REDACTED] states she has no direct ties left in Ghana and that she will not be able to secure a comparable job in Ghana. She states she would be particularly concerned about her health issues in Ghana as she ages and her condition worsens.

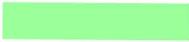
After a careful review of the record, the AAO finds that if the applicant's wife, [REDACTED], returned to Ghana, where she was born, to avoid the hardship of separation, she would experience extreme hardship. The record contains documentation corroborating [REDACTED] claims that she has been diagnosed with sickle cell anemia, underwent an elective hysterectomy in 2010, has a history of multiple antibody syndrome and anemia secondary to sickle cell disease, and takes several medications for her conditions. Copies of her medical records also indicate she has limited range of motion in her neck and right shoulder. In addition, copies of [REDACTED] medical records indicate he is currently thirteen years old, has a history of asthma, and had surgery for undescended testes. On appeal, the applicant has submitted ample documentation addressing an "overwhelmed" medical system in Ghana where there are long waits and drugs are unavailable, as well as articles describing sickle cell anemia as a very painful and traumatizing illness. The AAO recognizes that returning to

Ghana would disrupt the continuity of [REDACTED] health care as well as her son [REDACTED] health care. In addition, the AAO acknowledges [REDACTED] contentions that she has lived in the United States for the past twenty years and that her children would suffer emotional trauma due to the drastic change in culture. Considering the unique factors of this case cumulatively, the AAO finds that the hardship [REDACTED] would experience if she returned to Ghana to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

Nonetheless, [REDACTED] has the option of staying in the United States and the record does not show that she would suffer extreme hardship if she were to remain in the United States without her husband. Although the AAO is sympathetic to the family's situation, if [REDACTED] decides to stay in the United States, their situation is typical of individuals separated as a result of inadmissibility or exclusion and does not rise to the level of extreme hardship based on the record. Although [REDACTED] contends they are a two-income family, neither the applicant nor his wife makes a financial hardship claim and there are no financial documents in the record. With respect to [REDACTED] medical issues, aside from her assertion that her husband drives her to appointments and cares for her, there is no evidence in the record indicating that she needs her husband's assistance in any way due to any medical condition. There is no suggestion in the record that she needs any assistance with activities of daily living and according to [REDACTED] physician, "[s]he works as a nurse and she is able to perform her work without getting tired." [REDACTED], dated April 2, 2009. In addition, contrary to [REDACTED] contention that the couple's three children have the sickle cell trait, notes in her medical records explicitly state that "[s]he has three children and none of them have trait." [REDACTED] dated January 8, 2007. Furthermore, according to [REDACTED] the couple's oldest child is in college and the medical records indicate [REDACTED] has four brothers and three sisters. It is unclear from the record whether [REDACTED] is unable to drive due to her conditions and the applicant does not address whether any other family member could assist [REDACTED] if needed. Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of any medical condition or the treatment and assistance needed. Even considering all of the factors in the case cumulatively, there is insufficient evidence showing that if [REDACTED] remains in the United States, the hardship she will experience amounts to extreme hardship.

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 applicant's wife, the only qualifying relative in this case.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife caused by the applicant's inadmissibility to the United States. Having found the



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NON-PRECEDENT DECISION

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applicant statutorily ineligible for relief, no purpose would be served in discussing whether he 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 appeal is dismissed.