

(b)(6)



U.S. Citizenship
and Immigration
Services

Date: **OCT 08 2014**

Office: WASHINGTON DC

FILE: [REDACTED]

IN RE: [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:
[REDACTED]

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 Field Office Director, Fairfax, Virginia. 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 entered the United States on or about April 4, 2001 with a Ghanaian passport that did not belong to him. 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 procured admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Special Immigrant (Form I-360). 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 son.

The Field Office Director concluded that the applicant failed to establish that a bar to his admission to the United States would result in extreme hardship. The Field Office Director also found that the applicant's waiver application should also be denied as a matter of discretion. The Field Office Director denied the application accordingly. *See Decision of the Field Office Director*, dated August 22, 2013.

On appeal, filed on October 8, 2013, and received by the AAO on April 1, 2014, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) denial decision "was an abuse of discretion and contrary to law and fact" because it did not address the hardship the applicant would experience in Ghana and erroneously relied on the applicant's deferred-action status. Moreover, USCIS neglected to consider that the applicant is a victim of abuse and domestic violence.

The record contains, but is not limited to: two Forms I-290B, Notices of Appeal or Motion; briefs written on behalf of the applicant; a psychological assessment of the applicant; affidavits from the applicant, his mother, his sister, his brother and his friends; a birth certificate for the applicant's U.S. citizen son and two additional letters regarding his birth; country-conditions documentation for Ghana; letters from the applicant's employers and a letter written to the applicant's employer by the applicant; criminal and academic records for the applicant; identification documents for the applicant; the applicant's Application to Register Permanent Residence or Adjust Status (Form I-485) and Petition for Amerasian, Widow(er), or Special Immigrant (Form I-360) with accompanying documentation. The entire record was reviewed and considered in rendering this decision.

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.

The record reflects that the applicant entered the United States on or about April 4, 2001, with a Ghanaian passport that did not belong to him. He was found inadmissible to the United States

under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or misrepresentation. The applicant does not contest his inadmissibility on appeal.

Section 212(i) of the Act provides:

The Attorney General [now the Secretary of Homeland Security (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 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.

Sec. 204(a)(1)(A)(iii)(I) of the Act provides:

An alien who is described in subclause (II) may file a petition with the [Secretary] under this clause for classification of the alien (and any child of the alien) if the alien demonstrates to the [Secretary] that--

(aa) the marriage or the intent to marry the United States citizen was entered into in good faith by the alien; and

(bb) during the marriage or relationship intended by the alien to be legally a marriage, the alien or a child of the alien has been battered or has been the subject of extreme cruelty perpetrated by the alien's spouse or intended spouse.

(II) For purposes of subclause (I), an alien described in this subclause is an alien--

(aa)(AA) who is the spouse of a citizen of the United States;

The applicant filed his Form I-360 petition as the abused spouse of a U.S. citizen under Section 204(a)(1)(A)(iii) of the Act. Section 212(i) authorizes the Secretary to waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien granted classification under clause (iii) of section 204(a)(1)(A) if the alien demonstrates extreme hardship to the alien or the alien's U.S. citizen, lawful permanent resident, or qualified parent or child.

As the beneficiary of an approved I-360, the applicant must demonstrate extreme hardship to himself or a qualifying relative. 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-Moralez*, 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 U.S. 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.

In the present case, the applicant asserts that he would suffer emotionally and psychologically if he relocates to Ghana without his seven year-old son. He also states that he would lose the support that he currently receives from his family and friends in the United States. Although the applicant submits affidavits from his mother, siblings and friends, as well as a psychological assessment, to demonstrate his emotional and psychological hardships, they provide little detail regarding the type of support he requires or receives from family and friends in the United States. The psychological assessment indicates that when the applicant arrived in the United States in 2001, he lived with a "distant relative" in New York. According to the assessment, he moved to Virginia to live with friends in 2010, and he visits his son in New York at his father-in-law's house once a month. The applicant's mother, who lives in Ghana, states in her affidavit that the applicant needs a strong support system, which he would not have in Ghana, and that the applicant has his son, his job and his surroundings in the United States. Other than his son, his mother does not mention family members or close friends that may comprise a support system for the applicant in the United States. The applicant's sister, also in Ghana, does not describe the types of emotional or psychological hardships that he would encounter upon relocation or whether he has relatives or friends in the United States. It is also unclear whether and if so, to what extent, the applicant's mother and sister could provide him with emotional support there. The record also contains an affidavit from the applicant's brother, who claims he came to the United States on a student visa in 2009. It is unclear whether he still lives in the United States, and if so, what his current relationship is with the applicant. The applicant also provides affidavits from four friends who reside in the United States. However, it is unclear whether the applicant's friends permanently reside in the United States; three state they knew the applicant in Ghana, and two indicate they visited him in the United States from Ghana in 2009. Further, assuming the applicant's friends permanently live in the United States, they do not describe how they support the applicant.

The psychologist, after meeting the applicant once, concludes that if the applicant returned to Ghana without his son, it "would very likely cause [the applicant] to sink back into a more significant state of depression," indicating that this depression would occur due to his lack of work opportunities, his having few friends and connections in Ghana, and his being far from his son. While these assertions may be true, they are not supported by the record. Further, while the psychologist also notes that the applicant is currently emotionally vulnerable and anxious about his immigration situation, she does not specifically diagnose him with a psychological condition or disorder. In addition, the applicant notes that Ghana lacks adequate resources for victims of abuse and provides reports indicating the same. However, the record does not reflect whether the applicant has an ongoing relationship with a mental-health professional, whether such support is currently necessary or whether it would become necessary should he relocate.

The applicant also indicates that his son would suffer financial hardship if the applicant relocates to Ghana without him. The applicant asserts that he currently earns \$1500 monthly and sends money to pay for his son's clothing, food, and school books. The applicant's family and friends also claim that he financially assists his son. However the applicant submits no documentary evidence, such as receipts or copies of checks, to confirm claims of his financial support or to establish that his son requires his support. Further, the applicant submits no documentary evidence corroborating claims concerning his income and financial situation. Moreover, although the Field Office Director explained in her decision that the applicant failed to provide documentation showing his actual expenses and proof of support for his son, the applicant provides no new documentation addressing such deficiencies on appeal.

The applicant also asserts that his son needs him in the United States for "normalcy," and the applicant's friends and family also indicate that if the applicant relocates it will be very difficult for his son emotionally. However, the record provides no details regarding the nature and extent of psychological hardship his son could experience if the applicant were to relocate without him.

If the applicant and his son relocated to Ghana together, the applicant indicates that his son would suffer because his school, family and friends are in the United States. However, the record lacks information describing how leaving his school would cause the applicant's son hardship and does not describe the nature of his relationships with his friends and family in the United States. The applicant also states that his son would experience extreme hardship because living in Ghana would be a "culture shock." The applicant's mother also describes difficulties the applicant's son likely would experience in Ghana. Though living in Ghana would present new challenges and adjustments for the applicant's son, it is unclear that these would cause his son hardship that, considered in the aggregate with other evidence of hardship, would amount to extreme hardship. Therefore, the applicant has not met his burden of demonstrating that he or his son will suffer extreme hardship in the event that he relocates to Ghana with or without his son.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant or his son, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship as required under section 212(i) of the Act. As the applicant has not established extreme hardship, no purpose would be served in determining 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.