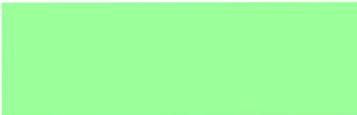


U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

(b)(6)



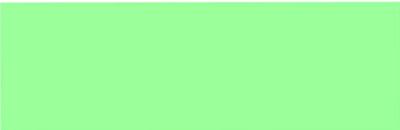
DATE: FEB 03 2015 OFFICE: LAWRENCE, MA

FILE: 

IN RE: APPLICANT: 

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.

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, Lawrence, Massachusetts. A subsequent appeal was remanded to the Field Office Director, and then it was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a fifth motion. The motion will be granted, and the underlying appeal will be sustained.

The applicant is a native and citizen of Ghana who has resided in the United States since February 23, 2005, when she presented a Belgian passport in the name of ‘ [REDACTED] ’ which did not belong to her to procure admission into the United States. She 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 was also found to be inadmissible under section 212(a)(6)(C)(i) of the Act for misrepresentations made in a 2004 nonimmigrant visa application. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Form I-130 Petition for Alien Relative. She 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 her U.S. citizen spouse and children.

The Field Office Director concluded that the applicant failed to show her qualifying relative would experience extreme hardship given the applicant’s inadmissibility and denied the application accordingly. *See Decision of Field Office Director* dated August 21, 2011. We affirmed, finding the record lacked sufficient evidence to demonstrate that the applicant’s spouse would experience extreme hardship either in the event of separation from the applicant or upon relocation to Ghana. *See AAO Decision*, May 10, 2012.

On the applicant’s first motion, we found although the applicant had submitted sufficient evidence to show her spouse would experience extreme hardship in the event of separation, she did not establish he would suffer extreme hardship upon relocation to Ghana. *See AAO Decision*, July 3, 2013. The prior AAO decision was affirmed. The subsequent two motions were also dismissed.

The applicant contends on this fifth motion that her spouse’s mother, who is a lawful permanent resident, would experience medical and financial hardship if the spouse returned to Ghana, and that applicant’s immigration situation is currently causing her spouse to suffer psychological difficulties. The applicant moreover claims that the country conditions and medical facilities in Ghana are so poor that her spouse would experience extreme hardship upon relocation. In support, the applicant submits: a brief in support; a statement from her spouse; a letter from a psychiatric service; copies of the spouse’s mother’s medical records; and reports and articles on country conditions in Ghana.

The record includes, but is not limited to: the documents listed above; other briefs in support; evidence related to visa applications; statements from the applicant and her spouse; medical and financial records; evidence on country conditions, employment, and medical care in Ghana; financial documents; letters from family, friends, an employer, and the community; evidence of birth, marriage, divorce, residence, and citizenship; other applications and petitions filed on behalf of the applicant; and photographs. The entire record was reviewed and considered in rendering a decision on the applicant’s fifth 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.

On this fifth motion, counsel does not contest the applicant's inadmissibility. As such, we again affirm that the applicant remains inadmissible under section 212(a)(6)(C)(i) of the Act. The applicant's qualifying relative for a waiver of this inadmissibility is her U.S. citizen spouse.

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.

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.

In the brief on this fifth motion, counsel claims that the spouse will experience family and safety-related, medical, and economic hardship upon relocation to Ghana. Counsel indicates that the spouse's children and mother live with him in the United States, and that his mother suffers from hypertension and diabetes. Medical records are submitted in support. The spouse adds that the applicant has helped him take care of his mother. Counsel states that the mother is not employed and is wholly dependent on her son and the applicant for all her needs. The spouse's father asserts in a statement that he lives in Ghana, he is financially dependent on his son's United States income, and if his son relocated to Ghana, he would be unable to provide that financial support. Counsel describes the adverse economic, social, and political situation in Ghana, including human

rights violations such as female genital mutilation, as well as sanitation issues. Counsel contends that if the family were forced to relocate, they would likely become impoverished, and they would have to live under the rule of a corrupt government which allows criminal activity and human rights violations. Reports and articles on Ghana are submitted in support. Counsel additionally claims that the spouse's documented hypertension would not be controlled in Ghana, and his anxiety would be exacerbated. Letters from a psychiatric service and the spouse's physician are present in the record. The spouse also states that he was recently appointed to the city's library board, and that he would like to continue serving in that role.

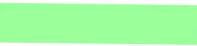
The applicant has submitted sufficient evidence to demonstrate that her spouse would experience extreme hardship upon relocation to Ghana. The record reflects that, while the spouse has family ties in Ghana, he is also assisting his lawful permanent resident mother in the United States with her medical problems, and his service on the city's library board is evidence of his community ties in the United States. Furthermore, the applicant has submitted an employment letter and two paystubs which indicate that the spouse is now employed in the United States. Even though this employment commenced less than a year ago, the record reflects that the spouse would have to relinquish this job if he were to relocate to Ghana. In addition, although there is no assertion or documentation demonstrating that the spouse's family members in Ghana experience negative consequences from the adverse country conditions discussed on motion, evidence submitted indicates that such conditions may negatively impact the spouse, who now has two children, upon returning to the country of his birth. Moreover, we previously noted that the spouse's medical issues will cause him difficulty upon relocation to Ghana.

In light of the cumulative evidence of record, the AAO finds the applicant has established that her spouse's difficulties would rise above the hardship commonly created when families relocate as a result of inadmissibility or removal. In that the record demonstrates that the emotional, financial, medical, or other impacts of relocation on the applicant's spouse are in the aggregate above and beyond the hardships normally experienced, the AAO concludes that he would experience extreme hardship if the waiver application is denied and the applicant's spouse relocates to Ghana.

We previously found that the applicant's spouse would experience extreme hardship upon separation from the applicant. *See AAO Decision on first motion*, July 3, 2013. As nothing in the record indicates that this finding was made in error, we affirm this finding.

Considered in the aggregate, the applicant has established that her U.S. citizen spouse would face extreme hardship if the applicant's waiver request is denied.

Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.



The negative factors include the applicant's false representations in her 2004 visa application, her 2005 presentation of a Belgian passport to procure admission, and her period of unlawful status in the United States. The positive factors include the extreme hardship to the applicant's spouse, the applicant's lack of a criminal record, and evidence of good moral character as stated in letters from family and friends.

Although the applicant's immigration violations are serious, the record establishes that the positive factors in this case outweigh the negative factors and a favorable exercise of discretion is warranted. The burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden. Therefore, the motion will be granted, and the underlying appeal will be sustained.

ORDER: The motion is granted, and the underlying appeal is sustained.