



U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **JUL 02 2015**

FILE: [REDACTED]

APPLICATION RECEIPT: [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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

*for*

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, St. Paul, Minnesota, denied the application. 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 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 admission to the United States through fraud or misrepresentation. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act to remain in the United States with his U.S. citizen spouse and children.

The field office director found that the applicant failed to establish that his qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director* dated October 14, 2014.

On appeal the applicant contends that the field office director erred by not considering the circumstances of hardship in their totality. With the appeal the applicant submits a statement along with updated medical information for his son and evidence of the birth of his third child. The record contains previous statements from the applicant and his spouse, letters of support from friends, school documentation for the applicant's children, financial information, documentation showing his spouse's derivative asylum status and subsequent naturalization, and other evidence submitted in conjunction with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering a decision on the appeal.

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 that:

The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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 reflects that applicant entered the United States on April 7, 2003, under the visa waiver program using a fraudulent Belgian passport. Based on this information the field office director

determined the applicant to be inadmissible for fraud or misrepresentation. The applicant has not contested the finding. The record further reflects that on March 7, 2004, the applicant and his spouse were married and that the applicant was the beneficiary of a Refugee/Asylee Relative Petition (Form I-730) filed on April 7, 2005. That petition was denied on March 9, 2009, because a relationship did not exist at time the petitioning spouse had been granted asylum status on August 17, 1999, and also because more than two years had passed since her grant of asylum. The applicant was served an order of removal under section 217 of the Act on September 17, 2010, and detained by U.S. Immigration and Customs Enforcement from that time until being released on September 15, 2011. On October 12, 2010, the applicant filed an Application for Asylum and for Withholding of Removal (Form I-589) which was denied by an immigration judge on February 2, 2011. An appeal to the Board of Immigration Appeals (BIA) was dismissed on June 23, 2011, with the BIA finding no error in the finding that the applicant lacked credibility. A motion to reopen was dismissed by the BIA on November 20, 2014.

A waiver of inadmissibility under section 212(i) 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. The applicant's spouse 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-Morales*, 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 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. *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)); 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 her affidavit dated January 25, 2013, the applicant’s spouse states that while the applicant was detained she had difficulty getting care for her children and that she often missed work. She states that it was stressful for her while the applicant was detained as the children had behavioral and emotional problems and they were often crying, not listening, not eating well, and falling behind in school, but they improved when the applicant was home. Letters from friends of the applicant’s spouse also state that while the applicant was detained his spouse struggled financially and with the children’s behavior, and a letter from the spouse’s church notes that members of the congregation assisted the spouse with her children. The spouse further states that if the applicant returns to Ghana she would have difficulty going to work, getting the children to school, and making ends meet financially on one income.

In his affidavit dated January 25, 2013, that applicant states that after their marriage in 2004 he and his spouse were never apart until he was detained in 2010. He further states that if he returns to Ghana, his children and their mother would be separated because the children would go with him while their mother would stay in the United States to work and send money.

The applicant's spouse states that while the applicant was detained their church helped her family, but that she still accumulated debt and reached the limits on their credit cards. The spouse asserts that if the applicant returns to Ghana, where jobs are scarce, and her children go with him she could not support herself while sending money to them, in addition to the money she already sends to family there for medicine.

Financial documents submitted to the record include a letter from the spouse's employer, dated November 9, 2011, stating that she had been employed since December 2008; pay statements for the spouse from April 2012; income tax filings from 2009, 2010, and 2011; and receipts for money transfers to Ghana in 2012. No updated financial documentation was submitted on appeal, thus the record contains no documentation establishing the spouse's current income.

The spouse's statement and letters from family, friends, and the spouse's church describe the difficulty that the spouse had financially and emotionally and in providing caring for her children while the applicant was detained. Thus we find evidence in the record, considered in the aggregate, establishes that the applicant's spouse would experience extreme hardship due to separation from the applicant.

In her affidavit the applicant's spouse notes, and the record confirms, that her father was granted asylum from Ghana in 1996 and died in the attacks on the World Trade Center on September 11, 2001, and that she was admitted to the United States as a derivative asylee from Ghana in 1999. She states that if she were to relocate to Ghana to reside with the applicant she would not have the family or church support she has in the United States, where she has now lived for half of her life.

The record establishes that the applicant's children, the oldest of which were born in 2005 and 2007, are natives and citizens of the United States and are integrated into the United States lifestyle and educational system. The Board of Immigration Appeals (BIA) found that a [REDACTED] year-old child who lived her entire life in the United States, who was completely integrated into the American lifestyle, and who was not fluent in Chinese, would suffer extreme hardship if she relocated to Taiwan. *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001). We find *Matter of Kao and Lin* to be persuasive in this case due to the similar fact pattern.

The applicant's spouse states that in Ghana the children would not receive the special education services they receive in the United States and the applicant states that if the children were to go to Ghana they would have a difficult time because they do not know the Twi language, would have no access to special education, and would need fees for school. School information submitted to the record shows the applicant's children with some developmental delays, including some language issues, with an evaluator speculating about the use of two languages in the home, and that the applicant's son has received language therapy. School records for the applicant's daughter show that her adaptive skills in 2010 were below that of children of similar age and that scores were in an area of concern. For both children subsequent reports showed improvement.

Although not indicating the seriousness of the son's condition, letters from his pediatrician, the most recent dated January 8, 2015, show that there is concern for the son's growth, that he needs to be

monitored, and that he may need treatment. According to the U.S. Department of State, medical facilities in Ghana are limited, particularly outside the capital, Accra. *U.S. Department of State, Bureau of Consular Affairs*, July 18, 2014.

We find that to uproot the applicant's children at this stage of their education and social development and relocate them to Ghana, in light of the son's medical conditions and the substandard medical care in Ghana and the children's receipt of special education services in the United States, would constitute extreme hardship to them, and by extension, to the applicant's spouse, the only qualifying relative in this case. In addition, as noted above, the record reflects that the applicant's U.S. citizen spouse was granted asylum in the United States from Ghana and has been residing in the United States from more than 15 years.

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.

In *Matter of Mendez-Moralez*, in evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the BIA stated that:

The factors adverse to the applicant 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, recency and seriousness, and the presence of other evidence indicative of an 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 the alien began his 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 and service to 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). . . .

*Id.* at 301.

The BIA further states that upon review of the record as a whole, a balancing of the equities and adverse matters must be made to determine whether discretion should be favorably exercised. The equities that the applicant for relief must bring forward to establish that he merits a favorable exercise of administrative discretion will depend in each case on the nature and circumstances of the ground of exclusion sought to be waived and on the presence of any additional adverse matters, and

as the negative factors grow more serious, it becomes incumbent upon the applicant to introduce additional offsetting favorable evidence. *Id.* at 301.

Although the applicant has favorable factors including hardship to his spouse and children and letters of support from his church and members of the community, his application to adjust of status was denied as a matter of discretion in part because of the applicant's entry to the United States under the Visa Waiver Program under section 217 of the Act, which states in part:

(b) WAIVER OF RIGHTS.-An alien may not be provided a waiver under the program unless the alien has waived any right-

- (1) to review or appeal under this Act of an immigration officer's determination as to the admissibility of the alien at the port of entry into the United States, or
- (2) to contest, other than on the basis of an application for asylum, any action for removal of the alien.

In this case, on September 17, 2010, U.S. Immigration and Customs Enforcement (ICE) issued the applicant a removal order for violating conditions of admission under section 217 of the Act by remaining longer than the authorized period. According to a USCIS policy memorandum,<sup>1</sup> USCIS should interpret the entry of that order as the Secretary exercising his or her discretion not to adjust the status of that individual. As long as the individual remains subject to a section 217 removal order, USCIS should deny the Form I-485 as a matter of discretion and approval may be a proper exercise of discretion only if ICE rescinds or withdraws the removal order. Here the record does not reflect that the applicant's order of removal has been rescinded or withdrawn.

Since the applicant's Form I-485 application for adjustment has been denied as a matter of discretion because of the removal order, we find the applicant is not entitled to a waiver as a matter of discretion, as it would not result in his adjustment of status to that of an alien lawfully admitted for permanent residence.

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.

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<sup>1</sup> See PM-602-0093, Adjudication of Adjustment of Status Applications for Individuals Admitted to the United States Under the Visa Waiver Program, (November 14, 2013)