



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-O-

DATE: NOV. 16, 2015

APPEAL OF NEW YORK FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Ghana, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (the Act) § 212(i), 8 U.S.C. § 1182(i). The Director, New York District Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be 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 attempting to procure admission through fraud or misrepresentation. The Applicant seeks a waiver of inadmissibility to remain in the United States. The Director concluded the Applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director*, August 27, 2014.

On appeal, the Applicant asserts he provided sufficient evidence to show that extreme hardship to his wife would result from his inability to remain in the United States. In support, he offers his wife's updated statement and a psychological report. The record contains documentation previously submitted including: copies of divorce, marriage, death, and naturalization certificates; copies of travel documents; financial information; prior benefits applications; and a previous statement by his spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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

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)(1) of the Act provides:

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

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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 the Applicant procured admission on October 10, 1998, using the passport and U.S. visa of another person.¹ The Applicant does not dispute that he is inadmissible under section 212(a)(6)(C) of the Act for fraud and misrepresentation and thus requires a waiver of inadmissibility.

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. Hardship to the applicant or his child can be considered only insofar as it results in hardship to a qualifying relative. The Applicant's U.S. citizen 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-Moralez*, 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.

¹ Evidence shows that the Applicant and the "other person" have the same given name and surname and, further, that the person whose passport the Applicant used was his wife's first husband from whom she was divorced on [REDACTED] 2005.

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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. 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.

The qualifying relative makes no claim that relocating abroad to remain with the Applicant would impose a hardship upon her, and the record contains no indication she has considered moving overseas. The psychologist who diagnosed her major depression states that returning to Ghana is a poor option, as it would be too stressful for someone suffering from depression and place her where appropriate mental health services were unavailable. See *Psychological Evaluation*, September 14, 2014. Although the evaluation lists treatment recommendations that include behavioral therapy as well as a psychopharmacological referral, there is no evidence on record indicating that she has received any treatment or regarding the availability of treatment in Ghana.

Immigration records indicate that the qualifying relative emigrated to the United States from Ghana in 2005 at the age of 41. The record reflects that she attended sewing school in Ghana, where she was a seamstress, and upon moving here worked as a seamstress for five years. Since 2010, she has been employed as a room attendant at a New York hotel. Her parents, first husband (the father of her children), and six of her eight siblings live in Ghana, while her remaining two siblings and two adult children live here. The psychologist notes that her children, ages [redacted] and [redacted], attend college away from home but live with their mother when not at school. The Applicant’s wife indicates that

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her unavailability due to work has caused her children to consult more with the Applicant regarding school and personal matters than with her. There is no evidence concerning her relationship with her family members here to establish that separation from them would result in hardship beyond the common results of removal or inadmissibility and we note that she has continuing family ties, as well as a work history, in Ghana. Considering the entire record and based on a totality of the circumstances, we conclude the Applicant has not established that his wife would suffer extreme hardship were she to relocate abroad with him.

The Applicant's wife claims that if her husband departs the United States, the impact of his absence upon her would exceed the common or typical consequence of removal and rise to the level of extreme due to the resulting loss of his emotional and psychological support, closeness with her children, and contribution to household income. The psychologist states that the qualifying relative's concern about the Applicant's immigration status and possible deportation is causing her symptoms consistent with depression, including insomnia, nervousness, sadness, weakness, and frequent crying. *See Psychological Evaluation*. There is no evidence she has any health condition requiring care or assistance that only the Applicant may provide. Based on the record, we cannot conclude that separation from the husband she married in [REDACTED] 2014 will have the claimed consequences. Although we are sensitive that the Applicant's return to Ghana will cause a degree of hardship to his wife, the Applicant has not shown she will experience hardship beyond the common or usual consequence of family separation. The evidence reflects her support network includes two children, who live with her when not attending college, and two siblings. Further, there is no evidence that she will be unable to visit her husband in Ghana to ease their separation.

Regarding financial hardship, the record contains no evidence the Applicant ever reported income. While the qualifying relative states her husband sometimes contributes income earned "off the books" and claims that his performance of household chores allows her to work longer hours, there is no documentation showing the Applicant provides economic support. We note that the qualifying relative's 2013 tax return reflects she earned over \$40,000 in wages for the year before they married. As the Applicant has not established he is helping support himself and his wife, nor demonstrated having any earned income, he has not established that without his support she will become unable to meet her expenses. Rather than establish that the Applicant's wife depends on the Applicant for financial support, the available evidence indicates that she is supporting him and is the primary wage earner. While sensitive that her husband's departure will remove a potential wage earner from the household, there is no showing that his continued presence will spare her financial problems.

For all these reasons, while we recognize that the Applicant's absence will cause hardship to his wife, there is insufficient evidence that the cumulative effect of the emotional and financial hardships to her due to his inadmissibility would rise to the level of extreme. We conclude based on the evidence provided that, were she to remain in the United States without the Applicant due to his inadmissibility, his absence would not cause her hardship beyond those problems normally associated with family separation.

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The documentation on record, when considered in its totality, reflects the Applicant has not established that his wife would suffer extreme hardship if the Applicant cannot remain in the United States. The record demonstrates that she faces no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a family member is removed from the United States or refused admission. Although we are not insensitive to the qualifying relative's situation, the record does not establish that the hardship she would face rises to the level of "extreme" as contemplated by statute and case law. Having again found the Applicant statutorily ineligible for relief, no purpose would be served in discussing 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 appeal is dismissed.

Cite as *Matter of A-O-*, ID# 13295 (AAO Nov. 16, 2015)