



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

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

MATTER OF G-S-

DATE: OCT. 22, 2015

APPEAL OF WASHINGTON, DC 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 of the Washington, DC Field Office denied the application. The matter is now before us on appeal. The appeal will be sustained.

The Applicant was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission into the country by fraud or the willful misrepresentation of a material fact. The Applicant is the beneficiary of an approved Form I-130, Petition for Alien Relative, filed on her behalf by her U.S. citizen spouse. She filed a Form I-601, Application for Waiver of Grounds of Inadmissibility, under section 212(i) of the Act, in order to reside in the United States with her spouse and family.

The Director determined that the Applicant did not establish that extreme hardship would be imposed on her spouse if he remained in the United States or if he relocated with the Applicant to Ghana. The Form I-601 was denied accordingly. *See Decision of the Director*, dated December 12, 2014.

On appeal, the Applicant asserts that the cumulative evidence in the record demonstrates that her spouse would experience extreme emotional, physical, and financial hardship if she is denied admission and he either remains in the United States or relocates with her to Ghana. The Applicant also asserts that the evidence establishes that a favorable exercise of discretion is merited in her case. In support of these assertions the record includes, but is not limited to, affidavits from the Applicant's spouse, family members and friends; medical and financial evidence; country conditions information; school documentation; and information establishing relationships and identity.

The entire record was reviewed and considered in arriving at a decision on the appeal.

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

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 chapter is inadmissible.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation, and states:

(1) 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.

The record reflects that on September 3, 2002, the Applicant used a passport that was not hers to gain admission into the United States. The Applicant is therefore inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for procuring admission into the country by fraud or willful misrepresentation of a material fact. The Applicant does not contest her inadmissibility under section 212(a)(6)(C)(i) of the Act.

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 record establishes that the Applicant's U.S. citizen spouse is the only qualifying relative in this case. Hardship to the Applicant can be considered only insofar as it results in hardship to a qualifying relative. 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 of Immigration Appeals (BIA) 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 BIA 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 BIA 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 BIA 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 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 Applicant's qualifying relative is her U.S. citizen spouse. To establish that her spouse would experience extreme emotional, physical, and financial hardship if she is denied admission and he remains in the United States, the Applicant submits affidavits, medical records, and financial documentation.

The record also contains references to hardship that the Applicant's children would experience if the waiver application were denied; however, the Applicant's spouse is the only qualifying relative for

(b)(6)

Matter of G-S-

the waiver under section 212(i) of the Act. Hardship to the Applicant's children will therefore not be separately considered, except as it may affect the Applicant's spouse.

The Applicant's spouse asserts in an affidavit, dated October 1, 2014, that he and the Applicant have been married for over seven years and that they have two young children, ages [REDACTED] and [REDACTED]. He states that he is the primary income earner in the family and that the Applicant takes care of their children and their home. He indicates further that their children would be devastated if they were separated from their mother, and that he would feel responsible for the emotional consequences that his children experience due to separation from their mother. In addition, he indicates that he would need to continue working full-time and would be unable to spend much time with the children, which would cause additional hardship to the children and to him. The Applicant's spouse states that he loves the Applicant and would miss her if they lived separately. In addition, he states that the Applicant is currently pregnant with their third child, and that it would be difficult for him to be separated from the Applicant and their baby if she took the child with her to Ghana. The Applicant's spouse indicates that he would also experience financial hardship if he remained in the United States because he would have to pay for childcare services and for someone to take care of their home in the Applicant's absence. He states that due to high unemployment in Ghana, he would also have to send money to support the Applicant, causing him further financial hardship. In addition, the Applicant's spouse states that he suffers from hypertension and is on medication, and that the stress of separation and caring for their children would aggravate his medical condition.

The Applicant's oldest child states in a letter that her mother takes care of her and that she loves and would miss her mother if they were separated. Letters from family friends indicate generally that they believe that the Applicant's spouse and family would experience hardship if the Applicant were unable to remain in the United States.

A medical letter confirms the Applicant's pregnancy, and reflects that her due date was [REDACTED] 2015. In addition, medical evidence for the Applicant's spouse corroborates assertions that he has been diagnosed with hypertension and that he has been prescribed medication.

The record also contains a September 8, 2014, employer letter reflecting that the Applicant's spouse has been employed by a security services company since August 2004 and that he works full-time. Salary evidence reflects that the Applicant's spouse receives health benefits through his work. The Applicant's and her spouse's 2013 Form 1040, U.S. Individual Income Tax Return, reflects that the Applicant's spouse earned a total income of \$53,505 in 2013, and that the Applicant earned \$16,888. Evidence of a student loan balance in the amount of \$5864 and of monthly rental and utility obligations in the amount of about \$2000 is also contained in the record. In addition, the Applicant submits an estimated monthly budget including the family's current costs and projected costs if the Applicant's spouse must pay for childcare and send financial assistance to the Applicant in Ghana. Country conditions evidence corroborates claims that there is high poverty and unemployment in Ghana.

(b)(6)

Matter of G-S-

Upon review, the cumulative evidence in the record is sufficient to establish that the Applicant's spouse would suffer hardship beyond that normally experienced upon inadmissibility of a family member if he remains in the United States separated from the Applicant. The record reflects that the Applicant and her spouse have two young children and were expecting a third child due on [REDACTED] 2015. The evidence shows that the Applicant's spouse would experience emotional hardship due to his separation from the Applicant if she returned to Ghana. The evidence also demonstrates that the Applicant's spouse would experience emotional hardship if their children returned to Ghana with the Applicant. Further, the Applicant demonstrated that her spouse would experience hardship based on their children's emotional state upon separation from their mother or their father. The evidence also establishes that if the children remained in the United States with the Applicant's spouse, he would need assistance caring for them due to his employment obligations, causing added financial hardship. In addition, country conditions evidence reflects high poverty and unemployment in Ghana, corroborating assertions that the Applicant's spouse may need to send money to support the Applicant in Ghana. Considered in the aggregate, the applicant has demonstrated that the cumulative effect of the hardships that the Applicant's spouse would experience if he remained in the United States without the Applicant rises to the level of extreme hardship.

Regarding hardship upon relocation to Ghana, the Applicant's spouse asserts in his October 2014 affidavit that there are many diseases in Ghana and that he would feel responsible if his children became sick there. The Applicant's spouse states that he would also experience financial hardship in Ghana because there are few employment opportunities in the country. He asserts further that he would need to pay for private education for their children in Ghana because schooling is inferior to that in the United States. The Applicant's spouse also expresses fear that elders in his and the Applicant's families would impose harmful and irreversible traditional practices on their children, including subjecting their daughter to female genital mutilation (FGM).

Country conditions evidence contained in the record corroborates the Applicant's spouse's financial and health related concerns for himself and his family, in that it reflects the existence of high poverty and unemployment in Ghana; the existence and high risk of contracting tropical, water, and food borne infectious diseases; and the lack of access to clean water or adequate sanitation facilities in Ghana. The country conditions evidence also reflects the existence of FGM practices in Ghana. In addition, the record reflects that the Applicant's spouse would experience job and health-related hardship upon relocation, in that he would leave the company where he worked for over 10 years in the United States, and he would lose health benefits he uses for treatment of his hypertension. The record also reflects that, although the Applicant's spouse is originally from Ghana, he has been a naturalized U.S. citizen since 2008, his children are U.S. citizens, and he has been living and working in the United States for many years.

Considered in the aggregate, the evidence in the record is sufficient to establish that the Applicant's spouse would suffer hardship beyond that normally experienced upon inadmissibility or removal if he relocated to Ghana.

The Applicant has also established that she merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of

Matter of G-S-

equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). In evaluating whether section 212(a)(6)(C)(i) of the Act relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the inadmissibility 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 and seriousness, and the presence of other evidence indicative of the 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 alien began 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 or service in 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). *See Matter of Mendez-Moralez*, 21 I&N Dec. 296, 301 (BIA 1996).

The unfavorable factors in this matter are the Applicant's admission into the United States in September 2002 by use of a fraudulent passport and her accrual of unlawful presence in the country. The favorable factors are the hardship the Applicant's U.S. citizen spouse and children would face if the Applicant is denied admission into the country, letters attesting to the Applicant's good character, and her lack of a criminal record. Upon review, we find that although the applicant's violation of immigration law is serious, the positive factors in this case outweigh the negative factors, such that a favorable exercise of discretion is warranted.

In application proceedings, it is the Applicant's burden to establish eligibility for the immigration benefit sought. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained.

Cite as *Matter of G-S-*, ID# 12801 (AAO Oct. 22, 2015)