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

U.S. Citizenship and Immigration Services

[redacted]

H6

FILE: [redacted] Office: ACCRA, GHANA Date: FEB 25 2011

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B)(v) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. §§ 1182(a)(9)(B)(v), 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Accra, Ghana. 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 pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure. She was further found to be inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for procuring admission into the United States by willful misrepresentation. She was additionally deemed inadmissible under section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for failing to attend deportation proceedings. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband and children.

The field office director noted that the applicant is inadmissible under section 212(a)(6)(B) of the Act, for which there is no waiver. *Decision of the Field Office Director*, dated November 5, 2009. On this basis, the field office director denied the Form I-601 application for a waiver. *Id.* at 1.

On appeal, counsel for the applicant asserts that the applicant is not inadmissible under section 212(a)(6)(B) of the Act, and thus the waiver application must be considered on the merits. *Brief from Counsel*, submitted on or about December 2, 2009.

The record includes, but is not limited to, a brief from counsel; statements from the applicant, the applicant's husband, the applicant's daughter, a teacher for the applicant's children, the applicant's friend, and a minister from the applicant's church; a copy of the applicant's marriage certificate; copies of birth records for the applicant and her children; a report on the applicant's family from a psychiatric professional; an addendum to the psychiatric evaluation; copies of school records for the applicant's children; phone cards; copies of mortgage documents and bills for the applicant and her husband; banking, tax, and employment records for the applicant and her husband; reports on conditions in Ghana, and; a copy of the applicant's husband's naturalization certificate.

The AAO will first address whether the applicant is inadmissible under section 212(a)(6)(B) of the Act, 8 U.S.C. § 1182(a)(6)(B), for failing to attend deportation proceedings.

Section 212(a)(6)(B) of the Act states:

> Failure to attend removal proceeding.-Any alien who without reasonable cause fails or refuses to attend or remain in attendance at a proceeding to determine the alien's inadmissibility or deportability and who seeks admission to the United States within 5 years of such alien's subsequent departure or removal is inadmissible.

As counsel correctly notes, the applicant was placed into deportation proceedings pursuant to an Order to Show Cause and Notice of Hearing on May 10, 1995, and she was ordered deported *in absentia* on November 7, 1995. However, section 212(a)(6)(B) of the Act did not take effect until

April 1, 1997, and it does not apply retroactively to proceedings before an Immigration Judge under section 242 of the Act that were initiated by an Order to Show Cause and Notice of Hearing. Memo, Virtue, Acting Exec. Assoc. Comm., HQ IRT 50/51.2, 96 Act 043 (June 17, 1997). Thus, the applicant is not inadmissible under section 212(a)(6)(B) of the Act for failing to attend her deportation proceeding.

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 Act is inadmissible.

Section 212(a)(9) of the Act provides, in pertinent part:

> (B) Aliens Unlawfully Present.-
>
> > (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-
> >
> > . . . .
> >
> > (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.

The record reflects that on or about July 2, 1994 the applicant entered the United States with a passport that misrepresented her nationality as Togolese, when in fact she is a citizen of Ghana. The field office director found that for this reason the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for procuring admission into the United States by willful misrepresentation.

On May 10, 1995, the applicant was placed into removal proceedings before an Immigration Judge pursuant to an Order to Show Cause. She failed to appear for her hearing and she was ordered deported *in absentia* on November 7, 1995. She filed multiple motions to reopen the proceedings, all of which were denied. On September 28, 1995, the applicant married her husband. Based on an approved Form I-130 relative petition filed by her husband on her behalf, on September 28, 2000 the applicant filed a Form I-485 application to register permanent residence or adjust status. However, the application was denied on August 20, 2001 for lack of jurisdiction due to the fact that the applicant was subject to an outstanding deportation order and therefore under the jurisdiction of the Immigration Court. The applicant continued to reside in the United States despite having been

ordered deported. She departed sometime between August 15, 2008[1] and March 20, 2009[2], yet the record does not indicate the precise date she departed.

Based on the foregoing, the applicant accrued unlawful presence from April 1, 1997, the date the unlawful presence provisions in the Act took effect, until she filed a Form I-485 application on September 28, 2000. She further accrued unlawful presence from the date her Form I-485 application was denied on August 20, 2001 until she departed the United States. These periods of unlawful presence total over 10 years. She now seeks reentry as an immigrant pursuant to the approved Form I-130 relative petition filed by her husband on her behalf. She was deemed inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present for more than one year and seeking readmission within 10 years of her last departure.

The applicant does not contest her inadmissibility under sections 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) of the Act on appeal, and she requires waivers under sections 212(a)(9)(B)(v) and 212(i) of the Act.

Waivers of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act are 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 her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband 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).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and

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[1] The applicant was interviewed by a mental health professional in Maryland on August 15, 2008.
[2] The applicant's husband issued a statement dated March 20, 2009 in which he indicated that the applicant was out of the United States.

not the result of removal or inadmissibility. As the Board of Immigration Appeals stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez,* 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the Board considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 ("[I]t is generally preferable for children to be brought up by their parents."). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS,* 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though we require an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

The AAO will first address hardship to the applicant's spouse if he relocates to Ghana. The applicant's spouse states that he and his children would not have a place to live in Ghana; the applicant lives with her uncle in a small room; he was told upon a prior inquiry that there are no openings in Ghana for FedEx; there are a lot of challenges with the delivery system; it would be difficult to work there; his children do not know anything about the culture in Ghana; he was struck by the number of people who were unemployed in Ghana; it would be a tremendous hardship for him to get his children to adapt to the culture in Ghana; his children only speak English; Twi and Ga are the languages spoken where the applicant resides; English is the primary language only at the most expensive private schools; he would not have the finances to send his children to private school in Ghana; he is afraid that his children would fall behind academically in Ghana; and it would be impossible to raise his American-born children in Ghana without a job. *Third Statement from the Applicant's Husband*, at 1-2, dated November 22, 2010. The record does not include sufficient supporting documentary evidence that the applicant's spouse would not be able to find employment in Ghana and support his family, or that he could not afford to send his children to English-language schools. Going on record without supporting documentation will not meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In his updated statement, [redacted] states that the applicant's spouse meets the diagnostic criteria for major depressive disorder; he has low mood and irritability, insomnia, weight loss, exhaustion and fatigue, poor motivation, emotional withdrawal, and symptoms of emotional and physical anxiety; and his score on the Hamilton Depression Rating Scale was consistent with significant depression; because major depressive disorder is a disease and not a malaise caused by stress, it does not improve simply by correcting the acute stress that triggered the depression; reuniting the applicant's spouse with the applicant in Ghana is not an option that allows for the applicant's spouse to recover from depression; and the applicant's spouse needs psychiatric treatment for his depression, treatment for his children, and reunification with the applicant in an environment where his family can thrive. *Updated Report from* [redacted] at 2, 4-5, dated November 17, 2010. The record includes an article on the mental health situation in Ghana. The AAO notes that the updated evaluation states that the applicant's spouse's depression and his son's depression have been triggered by separation from the applicant. *Id.* at 3. The AAO finds the doctor's aforementioned statements insufficient to establish that the applicant's spouse would experience emotional difficulty that is greater than that commonly encountered by the spouse's of inadmissible individuals..

The applicant's daughter states that she could not imagine the family moving to Ghana and they are used to being in the United States. *Statement from the Applicant's Daughter*, dated May 5, 2009. [redacted] indicates that the applicant's children will face challenges should they be compelled to adapt to life in Ghana. *Report from* [redacted] dated November 20, 2008. He states that the applicant's daughter is a socially anxious teenager and a severe emotional event could trigger the emergence of a mood disorder. *Id.* at 4. He states that the applicant's family's distress has been hardest on their youngest son, and that he is sensitive and emotionally delicate. *Id.* at 3. He indicates that health conditions are poor in Ghana, and that the applicant's children would be exposed to significant risks with more limited health care resources. *Id.* at 5. [redacted] indicates that the applicant's children will face hardship should they relocate to Ghana. While [redacted]

references poor health conditions in Ghana, he does not cite to any reports or otherwise establish a basis for his opinion on conditions in the country. The record reflects that the applicant's spouse would experience difficulties in Ghana, but the record includes insufficient evidence to establish that he would experience extreme hardship should he relocate to Ghana.

The AAO will now address hardship to the applicant's husband if he remains in the United States. The applicant's husband states that he has been married to the applicant for over 13 years and that she has been a loving, devoted, dedicated, caring, and compassionate wife. *Statement from the Applicant's Husband*, dated February 7, 2008. He asserts that he works as a contractor for Federal Express 14 hours per day, six days per week. *Id.* at 1. He provides that he would be unable to meet the cost of after-school care for his children until he finishes work. *Id.* at 2. He states that he does not have other family members who could help him with childcare. *Second Statement from the Applicant's Husband* at 2, dated March 20, 2009. The applicant's husband states that he and the applicant purchased a home, and that they own a second home that they rent. *Statement from the Applicant's Husband* at 2. The applicant's husband states that his financial commitments include mortgage payments, credit card debts, a truck loan, phone calls to Ghana and a property facing foreclosure; and he is not able to meet the house payment without the applicant's income. *Third Statement from the Applicant's Husband*, at 2. The record includes a mortgage loan default letter, a discontinuance notice from Washington Gas, numerous phone cards and several other bills, including large credit card bills. The record includes W-2 forms for the applicant and tax returns for the applicant and his spouse which reflect that she makes a significant portion of the household income.

describes the applicant's husband's history, including that he was born and raised in Ghana and immigrated to the United States in the 1980s. *Report from* He describes the demeanor of the applicant, the applicant's husband, and each of their children, and noted that they are in good physical health. *Id.* at 1-3. He indicates that the applicant's husband serves as a traditional father, in that he works long hours to provide for his family, and that he would have difficulty expanding his role to be a mother-figure for his three children. *Id.* at 3. posits that separating the applicant from her family will result in severe hardship to the applicant's husband and children. *Id.* at 3-4. In an updated report, states that the applicant's spouse meets the diagnostic criteria for major depressive disorder; he has low mood and irritability, insomnia, weight loss, exhaustion and fatigue, poor motivation, emotional withdrawal, and symptoms of emotional and physical anxiety; and his score on the Hamilton Depression Rating Scale was consistent with significant depression. *Updated Report from* , at 2.

The applicant's daughter describes the routine of her home, including that the applicant cares for her and her siblings while the applicant's husband works. *Statement from the Applicant's Daughter*, dated May 5, 2009. She expresses that she has had a difficult time adjusting to the applicant's absence since she departed for Ghana. *Id.* at 1. The applicant's daughter states that her and her two brothers are very lonely without their mother, it is hard for their father to take care of them by himself, her brothers have become emotionally unstable, she and her brothers have had to drop out of afterschool programs, and she is having trouble focusing at school and at home. *Second Statement from the Applicant's Daughter*, dated November 22, 2010. The applicant's children's instructor states that the children were not motivated and had minimal attention spans; she began to

hear them talk about missing their mother; this went on for a long period of time and they were distracted from their academics; the boys dropped out of the program for not completing their work and lack of motivation; and the daughter requires constant monitoring and encouragement. *Letter from* , dated October 14, 2010.

states that the applicant's daughter is a socially anxious teenager and a severe emotional event could trigger the emergence of a mood disorder. *Report from* , at 3-4. He provides that the applicant's family's distress has been hardest on their youngest son, and that he is sensitive and emotionally delicate. *Id.* at 3. In his updated report, states that the applicant's daughter has emotional and behavioral problems now; she goes without informing the applicant's spouse of her whereabouts, she is secretive about her peers and her activities, and her grades are plummeting; and she has symptoms of sadness, irritability, poor concentration and withdrawal. *Id.* at 2-3. In his updated report, states that the applicant's older son has trouble eating, sleeping and concentrating; he is withdrawn and his grades have slipped; and he meets the criteria for major depressive disorder. *Id.* at 3.

The applicant's husband also states that the applicant has undergone significant emotional problems, has gone to the hospital and has sought additional treatment for psychiatric issues. *Third Statement from the Applicant's Husband*, at 2. The record reflects that the applicant was rushed to a medical clinic and was diagnosed with depression. *Letter from* dated November 10, 2010.

Based on the totality of the hardship factors presented, the AAO finds that the applicant's spouse would experience extreme hardship if he remained in the United States without the applicant.

While extreme hardship has been found were the applicant's spouse to remain in the United States without the applicant, she has not established extreme hardship should her spouse relocate to Ghana. As such, she has not established extreme hardship under sections 212(i) and 212(a)(9)(B)(v) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.