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



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



tl6

DATE: JUN 08 2011 OFFICE: ACCRA, GHANA

FILE: 

IN RE: 

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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,

A handwritten signature in black ink that reads "Perry Rhew".

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Accra, Ghana and 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1182(a)(6)(C)(i), for having sought an immigration benefit through fraud or willful misrepresentation, and section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking admission within ten years of his last departure. He is the spouse and stepfather of U.S. citizens.<sup>1</sup> The applicant seeks waivers under sections 212(a)(9)(B)(v) and 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), in order to reside in the United States.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. The Field Office Director further found that the Form I-130, Petition for Alien Relative, benefitting the applicant had been approved in error pursuant to section 204(c) of the Act. *Field Office Director's Decision*, dated March 8, 2011.

On appeal, the applicant seeks to establish that his spouse and children will experience extreme hardship if his waiver application is denied. *Form I-290B, Notice of Appeal or Motion*, dated April 6, 2011.

The evidence of record includes, but is not limited to: statements from the applicant, his spouse, his spouse's aunt and grandmother, and the pastor of his church; tax returns; credit union statements; documentation of lease agreements; a Ghanaian police clearance for the applicant; and evidence submitted in connection with the applicant's removal proceedings. The entire record was reviewed and all relevant evidence considered in reaching a decision on the appeal.

Section 212(a)(9)(B) states in pertinent part:

(B) Aliens Unlawfully Present.-

- (i) In general. - Any alien (other than an alien lawfully admitted for permanent residence) who-

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<sup>1</sup> Although the record does not provide birth certificates for the children, the AAO finds tax and welfare documents in the record to establish that at the time of the appeal, the applicant was the stepfather of three minor stepchildren, two of whom were residing with his spouse.

(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 the applicant entered the United States on September 2, 1992, with a B-2 nonimmigrant visa, valid until March 1, 1993. The applicant remained in the United States following the expiration of his visa and began accruing unlawful presence on April 1, 1997, the effective date of the unlawful presence provisions under the Act. On September 29, 1999, the applicant filed a Form I-485, Application to Register Permanent Residence or Adjust Status, which temporarily placed him in a period of authorized stay.<sup>2</sup> With the denial of the Form I-485 on March 28, 2002, the applicant was put into removal proceedings where he renewed his adjustment application. On July 25, 2003, the immigration judge denied the adjustment application and the applicant again accrued unlawful presence until he was removed from the United States on January 22, 2007.<sup>3</sup> Based on this history, the AAO finds the applicant to have accrued unlawful presence in excess of one year. As he is seeking immigrant admission within ten years of his 2007 removal, the applicant is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act.

The record also establishes that the applicant is inadmissible pursuant to section 212(a)(6)(C)(i) of the Act for having sought to obtain a benefit under the Act through fraud or the willful misrepresentation of a material fact.

On March 14, 1996, the District Director, New York denied the first of the Form I-130s submitted to establish the applicant as the spouse of a U.S. citizen, noting that the birth certificate submitted for [REDACTED], the petitioner, and the marriage certificate establishing the applicant's marriage to [REDACTED] on February 24, 1995 were fraudulent. The District Director denied applicant's Form I-485 on the basis of his denial of the I-130.

On January 16, 2002, the Acting District Director, Denver, Colorado denied the second Form I-130, filed on September 29, 1999, pursuant to section 204(c) of the Act as he found the applicant had previously entered into a marriage solely for the purpose of evading U.S. immigration laws. The Acting District Director also noted that the birth certificate for the applicant submitted with the first Form I-130 was fraudulent as an investigation had confirmed that it was not registered in the Births

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<sup>2</sup> The proper filing of an affirmative application for adjustment of status has been designated by the Attorney General (Secretary of Homeland Security) as a period of stay for purposes of determining bars to admission under section 212(a)(9)(B)(i)(I) and (II) of the Act. See *Memorandum from Donald Neufeld, Acting Associate Director, Domestic Operations Directorate, et al., Consolidation of Guidance Concerning Unlawful Presence for Purposes of Sections 212(a)(9)(B)(i) and 312(a)(9)(C)(i)(I) of the Act*, dated May 6, 2009.

<sup>3</sup> Although the Field Office Director notes that the applicant filed a second Form I-485 on July 29, 2002, in conjunction with the second Form I-130 filed by his spouse, the AAO does not find the record or relevant data bases to confirm this filing.

and Deaths Registry in Ghana. On December 14, 2006, the third Form I-130 filed on behalf of the applicant was approved by the District Director, Denver, Colorado.

On appeal, the AAO finds the record to contain several briefs filed by the applicant's prior counsel, [REDACTED] in which she contends that the applicant is innocent of having submitted fraudulent documentation to the legacy Immigration and Naturalization Service (now USCIS). The applicant, [REDACTED] claims, was a victim of an immigration fraud perpetrated by two "legal consultants" whom he believed were helping him obtain a travel document to visit his sick father in Ghana. She asserts that the only actions taken by the applicant were paying these individuals a fee, providing them with his passport, and signing several blank forms, the purpose of which he did not understand. [REDACTED] states that the applicant believed that he was applying for a travel document and was unaware that these individuals thereafter filed Forms I-130 and I-485, supported by fraudulent birth and marriage certificates, on his behalf. [REDACTED] claims that the applicant only learned of the fraud when an attorney who previously represented him filed a 1998 Freedom of Information Act request.

The AAO notes [REDACTED] assertions regarding the circumstances that resulted in the submission of a Form I-130 and a Form I-485 supported by fraudulent birth and marriage certificates, but does not find the record to support them. [REDACTED] asserts that the applicant was seeking a travel document that would allow him to visit his sick father when he sought the assistance of the immigration consultants who victimized him. The record, however, contains a December 11, 2010 statement from the applicant in which he indicates that, in 1995, he approached the two individuals who "duped" him for assistance in remaining permanently in the United States and that he was aware they had filed for permanent residency on his behalf. We also note that the applicant, both on the Form I-485 he filed on September 29, 1999 and at the time of his April 19, 2001 adjustment interview, stated that he had previously filed an adjustment application in March 1995.

While the applicant in his December 11, 2010 statement asserts that he explained the circumstances surrounding the submission of the first Form I-485 at the time of his 2001 interview and that his counsel at that time had responded to the interviewing officer's request for additional documentation, a review of the record does not find this request for evidence or former counsel's response. We do find that in response to the Notice of Intent to Deny issued to the applicant on October 2, 2001, counsel submitted a statement from the applicant's spouse in which she asserts that the applicant informed her that in looking for a way to return to Ghana to see his dying father he had been "scammed" by two men who claimed to work for the legacy Immigration and Naturalization Service in New York. She contends that he did not know that they had used fraudulent documents on his behalf.

Based on the record, neither prior counsel's nor the applicant's spouse's reporting of the applicant's victimization by the immigration consultants is persuasive. The applicant's own statement indicates that when he approached the consultants from whom he sought assistance, he was trying to find a way to remain permanently in the United States. Moreover, the record indicates that the first Form I-130 and Form I-485 were filed in March 1995. The applicant's father, however, did not become ill

until approximately one year later, as established by a February 22, 1996 cable addressed to the applicant that states his father is ill and instructs him to proceed to Ghana. A Form I-131, Application for Travel Document, filed by the applicant on February 29, 1996 is found in the record.

In the present matter, the applicant claims to have had no knowledge that fraudulent documentation was used to support the Form I-130 underlying his 1995 application for permanent residence. However, the record does not provide any credible evidence that this is the case and the inconsistent explanations of the events that led to the filing of the fraudulent documentation provided by the applicant, his spouse and prior counsel further undermine the applicant's claim. In proceedings for an application for a waiver of grounds of inadmissibility, the burden of proof is the applicant's. *See* section 291 of the Act, 8 U.S.C. § 1361. Here the applicant has not met that burden and we, therefore, conclude that in 1995 the applicant attempted to establish eligibility as a lawful permanent resident based on a fictitious marriage to a U.S. citizen. Accordingly, he is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act for having sought a benefit under the Act through fraud or willful misrepresentation.

However, while the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act, we do not find the record to establish that he is subject to the provisions of section 204(c) of the Act, as stated by the Field Office Director.

Section 204(c) of the Act provides that:

[N]o petition shall be approved if (1) the alien has previously . . . sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States . . . by reason of a marriage determined by the Attorney General [now Secretary of Homeland Security] to have been entered into for the purpose of evading the immigration laws, or (2) the Attorney General [Secretary] has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

The corresponding regulation at 8 C.F.R. § 204.2(a)(1)(ii) states:

Fraudulent marriage prohibition. Section 204(c) of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The director will deny a petition for immigrant visa classification filed on behalf of any alien for whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

In the present matter, the AAO does not find the record to contain evidence that the applicant previously entered into or attempted or conspired to enter into a fraudulent marriage. While the applicant submitted fraudulent documentation to establish a 1995 marriage to a U.S. citizen, that marriage was a fiction, an invention of the fraudulent documents he submitted.

The Board of Immigration Appeals (BIA) in *Matter of Concepcion*, 16 I&N Dec. 10 (BIA 1976) and *Matter of Anselmo*, 16 I&N Dec. 152 (BIA 1977) found that where no marriage has taken place in connection with the filing of a prior immediate relative petition, section 204(c) is not applicable. We note that both decisions were issued prior to the amendment of section 204(c) by the Marriage Fraud Amendments of 1986, Pub. L. No. 99-639, 100 Stat. 3537, which added subsection (2), but find the holdings articulated in *Concepcion* and *Anselmo* – that a fictitious marriage is not marriage fraud under section 204(c) of the Act – to be relevant to the case before us. The BIA has determined that to constitute marriage fraud there must be evidence in the record to indicate that an alien previously conspired to enter into a fraudulent marriage. *Matter of Kahy*, 19 I&N Dec. 803 (BIA 1988). Marriage fraud has been found in cases where the record includes an admission by the beneficiary or the former spouse that he or she colluded to evade U.S. immigration laws, where the former spouse was paid to marry the beneficiary, where the marriage was never consummated, where the spouses never cohabited and where the spouses never presented themselves to family and friends as being married. See *Ghaly v. INS*, 48 F.3d 1426 (7<sup>th</sup> Cir. 1995); *Salas-Velazquez v. INS*, 34 F.2d 705 (9<sup>th</sup> Cir. 1994); *Matter of Phillis*, 15 I&N Dec. 385 (BIA 1975). In the present case, the record fails to indicate either that the applicant married the petitioner of the first Form I-130 benefitting him or that he attempted or conspired to do so. We also observe that the record fails to establish the existence of the U.S. citizen petitioner, Diane Allen. Accordingly, we conclude that the record contains insufficient evidence to invoke section 204(c) of the Act and withdraw the Field Office Director's finding in this regard.

We now turn to a consideration of the applicant's eligibility for waivers of his 212(a)(6)(C)(i) and 212(a)(9)(B)(i)(II) inadmissibilities under sections 212(a)(9)(B)(v) and 212(i) of the Act.

Section 212(a)(9)(B)(v) of the Act states as follows:

The Attorney General [now Secretary of Homeland Security] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established . . . that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

Section 212(i) of the Act provides that:

(1) 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.

A waiver of inadmissibility under either section 212(a)(9)(B)(v) or 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. Accordingly, in this proceeding, hardship to the applicant or his stepchildren will be considered only insofar as it results in hardship to the applicant's spouse. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (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 not the result of removal or inadmissibility. As the BIA 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 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 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 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.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, etc., 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 BIA 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 BIA 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.

On appeal, the applicant does not indicate that his spouse would suffer extreme hardship if she relocates to Ghana and a review of the record finds no prior claim that this would be the case. In the absence of clear assertions from the applicant, the AAO may not speculate as to what hardships the applicant's spouse would encounter if she joins him in Ghana. We must, therefore, find that the applicant has failed to establish that his spouse would experience extreme hardship upon relocation.

With regard to the hardship that the applicant's spouse would suffer if the applicant's waiver application is denied and she remains in the United States, the record contains statements from the applicant's spouse, her aunt, her grandmother and the pastor of the applicant's church, [REDACTED]. In an undated statement submitted in response to the Acting District Director's January 16, 2002 denial of the Form I-130, the applicant's spouse states that when she met the applicant she was smoking and drinking and had dropped out of high school. As a result of the applicant's presence in her life, the applicant's spouse states, she no longer smokes or drinks, has obtained her GED and is now in her third year of college. She states that the applicant has given her a second chance at life. A subsequent statement, dated July 15, 2005 and written by the applicant's spouse while the applicant was detained, indicates that without the applicant she has found it difficult to provide everything that her children need. She states that she has been receiving approximately \$300 a month from [REDACTED].

In a November 22, 2010 statement, the applicant's spouse again asserts that it has been extremely difficult for the family since the applicant was detained and then removed to Ghana. She states that when she met the applicant, her three children were very young, that he is the only father they know and that now that they are in their teens, they need his guidance and direction. The applicant's spouse contends that with the applicant's removal, the family lost his financial and emotional support, and that her situation worsened when [REDACTED] stopped providing them with financial assistance. The applicant's spouse reports that as a result of her being unable to shoulder the family's financial burden, she lost their residence and had to move into her aunt's home in July 2007. She also states that she has had to sell most of the things for which she and the applicant worked and that the quality of the family's life is so low that they are without such basic things as a car, computer, washing machine and dryer, which they had when the applicant was providing financial assistance. Her children, the applicant's spouse contends, have been affected emotionally and academically by the applicant's absence. She states that it feels as though she is losing her children to their environment and that she is unable to provide most of the things they need for school and in life as she lost her previous job and now works at McDonald's. The applicant's spouse also asserts that if the applicant had been able to remain in the United States, she could have completed her master's degree by now or would at least be in a better paid job based on her bachelor's degree.

The record also contains two statements from [REDACTED] the applicant's spouse's aunt, dated November 14, 2006 and October 29, 2010. In her November 14, 2006 statement [REDACTED] asserts that the applicant's spouse has been forced to give up her studies and work at various part-time jobs to put food on the table for her children. She states that the applicant's financial situation has gotten so desperate that she has lost the family's home and has had to move in with friends. [REDACTED] further asserts that the applicant's spouse's family is trying to help support her but that there is only so much that they can do. In her October 29, 2010 statement, [REDACTED] reports that the removal of the applicant from the United States has been financially and emotionally devastating to the applicant's spouse and her children, and that the applicant's spouse lived with her for some time as a result of financial problems. [REDACTED] also asserts that the applicant's spouse's family is afraid that her children could succumb to peer pressure and the vices of society in the applicant's absence. She states that she hopes the applicant will be allowed to return to the United States to "avoid [the applicant's spouse] taking any funny and frustrating decisions that would be too difficult to reverse."

In a November 14, 2006 statement, [REDACTED] the applicant's spouse's grandmother, asserts that during the time the applicant was detained, her granddaughter had to give up her schooling because she no longer had the applicant's financial support. A July 11, 2005 statement from [REDACTED], the pastor at [REDACTED] establishes that during the applicant's detention, the church was providing his family with rent money. In his statement, [REDACTED] asserts that the applicant's family has been seriously affected by his detention and has been disoriented.

As previously discussed, the applicant has also submitted his own statement, dated December 11, 2010, in which he contends that the delay in the issuance of his visa is destroying his family and that

his being in Ghana without a job puts a further burden on them because there is no money for his spouse and stepchildren to visit him. He states that, financially and emotionally, his family continues to suffer in the United States.

The AAO finds limited documentary evidence of the applicant's financial situation. The most recent evidence of the applicant's and his spouse's housing costs is found in a 2004 lease agreement that indicates the family was paying the Denver Housing Authority \$98 per month for [REDACTED]. However, the record includes a June 17, 2004 change of address form submitted to the immigration court that demonstrates the applicant and his family had ceased to live at the [REDACTED] address prior to the applicant's detention. No documentation establishes their subsequent housing costs or that the applicant's spouse lost the family's housing because of her inability to pay the required rent.

The record also fails to establish the applicant's spouse current employment or income. A 2008 W-2 and tax return offer proof that she earned \$17,554 for that year. However, no documentation supports the applicant's spouse's claim that she lost this job and is currently employed by McDonald's. The record also contains no earnings statements or other evidence that would indicate her current level of income. While the AAO acknowledges the July 11, 2005 statement from [REDACTED] in which he reports that his church is providing financial assistance to the applicant's family, he does not indicate the amount of that support. Further, in that the letter is dated more than five years prior to the filing of the appeal, it cannot serve as proof of the applicant's spouse's current financial status. We also note that the applicant's spouse, aunt and grandmother indicate that the loss of the applicant's support resulted in the interruption of her education. However, we do not find the record to document that the applicant's spouse was enrolled in any educational program at the time of the applicant's detention and subsequent removal. Going on record without supporting documentation is not sufficient to 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)). The AAO further observes that the record fails to demonstrate that the applicant is unable to provide his family with financial assistance from outside the United States. While in his December 11, 2010 statement, the applicant asserts that he is unemployed, the Form DS-230, Application for Immigrant Visa and Alien Registration, he filed on April 25, 2009, indicates that he has been employed as a sales representative in Cape Coast, Ghana since April 2007.

Although the AAO acknowledges that the applicant's spouse will experience emotional hardship if her separation from the applicant continues, the record includes no evidence that distinguishes her hardship from that normally created by the separation of spouses. The statements of the applicant's spouse, her aunt, her grandmother and the applicant's pastor all report that the applicant's detention and removal have resulted in considerable emotional hardship for her and her children. However, these statements do not indicate the specific impacts of the applicant's removal on his spouse's emotional/mental health and no other documentation in the record addresses the emotional hardship that the applicant's spouse has suffered as a result of separation. While the applicant's spouse also claims that her children are suffering in the applicant's absence, we note that, as previously

discussed, the applicant's stepchildren are not qualifying relatives for the purposes of this proceeding and the record does not document how any hardship they may be experiencing is affecting their mother, the only qualifying relative. Accordingly, based on the record before us, the AAO finds insufficient evidence to conclude that the applicant's spouse would suffer extreme hardship if the waiver application is denied and she remains in the United States.

The record does not establish the applicant's eligibility for a waiver of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act. Having found him statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under sections 212(a)(9)(B)(v) and 212(i) of the Act, the burden of establishing that the application merits approval 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 will be dismissed.