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



H6

DATE: NOV 10 2011 OFFICE: ACCRA, GHANA

FILE:

IN RE: APPLICANT:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(a)(9)(B) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B), Section 212(i) of the Act, 8 U.S.C. § 1182(i), and Section 212(d)(11) of the Act, 8 U.S.C. § 1182(d)(11).

ON BEHALF OF APPLICANT:



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, and 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 in the United States for more than one year and seeking readmission within 10 years of her last departure from the United States. The applicant was also 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 having sought to procure a visa, other documentation, or admission to the United States through fraud or misrepresentation. The applicant was additionally found to be inadmissible to the United States pursuant to section 212(a)(6)(E)(i) of the Act, 8 U.S.C. § 1182(a)(6)(E)(i), for having knowingly encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law. The applicant seeks a waiver of inadmissibility in order to reside in the United States with her U.S. Citizen spouse.

The Field Office Director concluded the applicant failed to establish her qualifying relative, her U.S. citizen spouse, would suffer extreme hardship if the waiver was not granted, that she did not qualify for a waiver of inadmissibility of section 212(a)(6)(E)(i) of the Act because the child Gertrude was not the applicant's spouse, parent, son, or daughter at the time of the action, and denied the application accordingly. *See Decision of Field Office Director* dated May 13, 2009.

On appeal, counsel for the applicant submits a brief in support of appeal, copies of the Ghanaian constitution and statutes, a letter from an attorney in Ghana regarding the adoption in this matter, an expert opinion letter and the expert's curriculum vitae, an affidavit from [REDACTED] and copies of legal opinions from Ghana. In the brief, counsel concedes the applicant resided unlawfully in the United States from 1999 to 2004, and that the record does not contain sufficient evidence of extreme hardship to overcome this inadmissibility. *Brief in support of appeal*, July 8, 2009. Counsel asserts, however, that the applicant is not inadmissible for misrepresentation because she is legally [REDACTED] mother, she timely retracted her misrepresentation regarding her unlawful presence, and the forms which listed [REDACTED] as her children were filed and signed by the applicant's spouse, not the applicant. *Id.* Counsel contends the applicant is not inadmissible for alien smuggling because she did not give any assistance in violation of law. *Id.* Counsel then asserts if the applicant remains inadmissible for alien smuggling, she qualifies for a waiver under section 212(d)(11) of the Act because at the time of the action the person she aided was her daughter. *Id.*

The record includes, but is not limited to, the documents listed above, a 2008 order of adoption and related documents, statements from the applicant and her spouse, letters from counselors and employers, real estate documents, Federal Income Tax Returns, account statements, DNA test results, criminal check reports, evidence of health insurance, and birth, marriage, divorce, and naturalization certificates. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

(ii) Construction of unlawful presence.- For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the [Secretary] or is present in the United States without being admitted or paroled.

....

(v) Waiver.-The [Secretary] 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 to the satisfaction of the [Secretary] 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. No court shall have jurisdiction to review a decision or action by the [Secretary] regarding a waiver under this clause.

In a consular interview, the applicant admitted she lived in the United States illegally from 1999 to 2004, when she returned to Ghana. The applicant has therefore been unlawfully present in the United States for more than one year and is inadmissible pursuant to section 212(a)(9)(B)(i)(II) of the Act. The applicant's qualifying relative in this case is her U.S. Citizen spouse.

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

(i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

- (1) 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 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.

In the present case, the applicant claimed on her Form G-325A, Biographic Information, as well as her Forms DS-230, Application for an Immigrant Visa and Alien Registration (DS-230), that she resided in Kumasi, Ghana instead of in the United States from 1999 to 2004. However, the record reflects she retracted this misstatement at her first consular interview, admitting to living illegally in the United States during that time. The AAO notes that a timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for section 212(a)(6)(C)(i) ineligibility. *9 FAM 40.63 N4.6*. Whether a retraction is timely depends on the circumstances of the particular case. *Id.* In general, it should be made at the first opportunity. *Id.* If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview. *Id.*

The record reflects the applicant retracted her misrepresentation on her time in the United States during her first consular interview. Therefore, the AAO finds the applicant has timely retracted this misrepresentation, and is not inadmissible under section 212(a)(6)(C)(i) of the Act for this misrepresentation.

The Field Office Director also found that the applicant misrepresented her relationship with children [REDACTED] who she "claimed as... daughters" when in fact [REDACTED] and [REDACTED] are her step-daughters, and [REDACTED] was found to not be her biological child. *See Decision of Field Office Director, May 13, 2009.*

A misrepresentation is generally material only if by it the alien received a benefit for which he would not otherwise have been eligible. *See Kungys v. United States*, 485 U.S. 759 (1988); *see also Matter of Tijam*, 22 I&N Dec. 408 (BIA 1998); *Matter of Martinez-Lopez*, 10 I&N Dec. 409 (BIA 1962; AG 1964). A misrepresentation or concealment must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, that is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* at 771-72. The BIA has held that a misrepresentation made in connection with an application for visa or other documents, or for entry into the United States, is material if either:

1. the alien is excludable on the true facts, or
2. the misrepresentation tends to shut off a line of inquiry which is relevant to the alien's eligibility and which might well have resulted in proper determination that he be excluded.

*Matter of S- and B-C-*, 9 I&N Dec. 436, 448-449 (BIA 1960; AG 1961). In claiming [REDACTED] as her daughters at the consular interview, the applicant did not attempt to receive a benefit for herself, as the benefit would have accrued to the three children. Moreover, if the applicant had disclosed the children were not her biological children, she would still be eligible for the visa as the benefit depends on her relationship with her spouse, not the three children. As such, the AAO finds the Field Office Director erred in concluding that the applicant was inadmissible pursuant to section 212(a)(6)(C)(i) of the Act. Therefore, the waiver application for inadmissibility due to fraud or misrepresentation is unnecessary and the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act is moot and will not be addressed.

The applicant's claim that [REDACTED] was her biological child also does not make her inadmissible under section 212 (a)(6)(E)(i) of the Act. Section 212(a)(6) of the Act states, in pertinent part:

(E) Smugglers – (i) in General. – Any alien who at any time knowingly has encouraged, induced, assisted, abetted, or aided any other alien to enter or to try to enter the United States in violation of law is inadmissible.

The record reflects [REDACTED] is the sole beneficiary of a Form I-130, Petition for Alien Relative (Form I-130), filed on her behalf by the applicant's spouse. [REDACTED] Form I-130 was approved on June 14, 2006, the same date the applicant's Form I-130 was approved. Consequently, when the applicant applied for an immigrant visa, [REDACTED] was independently eligible for her own immigrant visa, and she could then enter the United States in compliance with law. The AAO therefore finds the Field Office Director also erred in concluding that the applicant encouraged, induced, assisted, abetted, or aided any other alien to enter or try to enter the United States in violation of law. The applicant is not inadmissible under section 212(a)(6)(E) of the Act and the issue of whether the applicant requires a waiver under section 212(d)(11) of the Act is moot and will not be addressed.

The applicant remains inadmissible for her unlawful presence in the United States of over one year under to section 212(a)(9)(B)(i)(II) of the Act, and requires a waiver of that inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act. The applicant's qualifying relative in this case is her U.S. Citizen spouse.

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly

when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (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 spouse contends he suffers from financial, emotional, and physical hardship. *Letter from applicant's spouse*, February 17, 2009. The applicant's spouse explains he

purchased a "\$280,000 home in the Atlanta Metro area... In the absence of my wife and the economic hardship which I am facing now, my opportunity to further my education to the Masters and the PhD levels has been shattered... I took two extensive pay cut[s] just to keep my part-time job... At [REDACTED], where I work full-time, my work hours fluctuate between 6 to 8 hours a day due to the economic hardship this country is facing. I have sold almost all my stocks (investments) to keep up with my home mortgage." *Id.* The applicant submits a home warranty deed as well as a 2009 Wells Fargo statement as evidence of property ownership and monthly payments. The two letters submitted as evidence of pay-cuts are from [REDACTED]. One letter states:

Due to the economic hardship we are experiencing right now, we have decided to have a pay-cut for all employees. In order not let our valuable employees' to go, we decided to have this salary reduction. When a thing normalizes in the future, we hope to retrain and reevaluate. As such, your salary of \$800.00 will be cut down to \$400.00 starting from 3/1/08. Please go to human resources and sign necessary documents if you accept the offer. We hope good times are ahead of us. Thank you for your cooperation

*Letter from [REDACTED] February 4, 2008.* The applicant also submits a 2008 investment statement, showing an ending balance of \$826.75 in an account. *See account statement, December 31, 2008.* The applicant also submits a copy of her spouse's 2005 federal income tax returns, showing an adjusted gross income of -\$2835.00. *See 2005 Federal Income Tax Returns.*

The applicant's spouse further explains he is "emotionally and physically... distraught." *Letter from applicant's spouse, February 17, 2009.* He asserts his state of mind caused him to make a mistake at work, and he was consequently sent to the human resources department, who referred him to the employee assistance program and to counseling. *Id.* A letter from [REDACTED] of the Counseling Associates is submitted in support. Therein, [REDACTED] reports: "He is currently under a great deal of stress because he has been unable to bring his wife and children to the United States from Ghana... his daughter in Ghana is failing in school and he is concerned about her. This situation is unhealthy for [REDACTED]. He is developing symptoms of anxiety and depression as this is a real hardship for him. I hope it will be possible to expedite the process to bring [REDACTED] and the three daughters to the [United] States." *Letter from [REDACTED] February 16, 2009.* A letter from a healthcare recruiter at [REDACTED] confirms that the applicant's spouse was asked to "take advantage of [the] EAP (Employees Assistance Program). [REDACTED] is very emotionally and physically distraught since his wife and children cannot join him in the United States. Because of his severe distress, I thought it would be advantageous for him to utilize this hospital service. Of course it will not replace his need to have his family with him." *Letter from [REDACTED] Healthcare Recruiter, February 2, 2009.*

[REDACTED] letter notes the applicant's spouse is "developing symptoms of anxiety and depression... I hope it will be possible to expedite the process to bring [REDACTED] and

the three daughters to the [United] States.” *Letter from* [REDACTED] February 16, 2009. In the one-page letter, there is no recommendation of treatment or medication, and no further explanation of the applicant’s spouse’s psychological background or current state. Given this lack of evidence, and [REDACTED] opinion that the applicant’s spouse is simply “developing symptoms of anxiety and depression,” nothing therein shows that his emotional and psychological hardship goes beyond that normally experienced by family members of inadmissible aliens. *Id.*

Moreover, the record does not support a finding of financial hardship. The applicant submits a portion of her spouse’s 2005 Federal Income tax returns to show a business loss of \$17,711.00 in 2005. *See 2005 Schedule C, Federal Income Tax Returns.* However, the record also contains 2007 Federal Income Tax Returns which show the spouse’s adjusted gross income as \$58,401.00. The applicant’s spouse claimed with respect to the Form I-864, Affidavit of Support, “On that issue I want to know if I can send you my 2006 tax returns, which I made \$52,758, and my 2007 tax returns which will be ready in March. In 2007 I made about \$62,600 for the year. With these, I think I am qualified to sponsor my family of four without Affidavit of Support from anyone.” *Letter from applicant’s spouse*, undated. The spouse’s assertions in the I-601 waiver application that he needs the applicant to assist with the mortgage payments and his education are somewhat inconsistent with these earlier statements.<sup>1</sup> *Letter from applicant’s spouse*, February 17, 2009. Moreover, it is unclear whether the applicant would be able to contribute to the household financially in the United States given there is no employment offer letter in the record and the applicant listed her occupation as a “house-wife” on her DS-230 Forms, and wrote “N/A” in response to the question about whether she intended to work in the United States. *See DS-230 Forms.* Given these indications, it is unclear if the applicant would be able to financially contribute to the household in the United States, or whether the applicant’s spouse requires such contributions. Additionally, despite submission of income, mortgage, and investment statements, the record does not contain sufficient evidence of the spouse’s or the applicant’s household expenses to support assertions of financial hardship, nor is there any evidence to support an assertion that the applicant’s spouse would have to give up on his educational advancement given the applicant’s inadmissibility. Without details of the family’s expenses and income, the AAO is unable to assess the nature and extent of financial hardship, if any, the applicant’s spouse will face.

While the AAO acknowledges that the applicant’s spouse would face some difficulties as a result of the applicant’s inadmissibility, the AAO does not find evidence of record to demonstrate that his hardship would rise above the distress normally created when families are separated as a result of inadmissibility or removal. In that the record fails to provide sufficient evidence to establish the financial, emotional or other impacts of separation on the applicant’s spouse are cumulatively above and beyond the hardships commonly experienced, the AAO cannot conclude

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<sup>1</sup> Although the applicant submits two letters from [REDACTED] as evidence of her spouse’s pay-cuts, it is unclear from the letters whether the \$800 to \$400, and \$400 to \$300 decreases were for monthly pay, weekly pay, or another time period. *Letters from* [REDACTED] February 4, 2008, July 28, 2008. No paystubs, W-2 statements, or Federal Income Tax Returns were submitted to clarify or corroborate the pay-cuts.

that he would suffer extreme hardship if the waiver application is denied and the applicant remains in Ghana without her spouse.

There is also no indication of hardship the applicant's spouse would experience upon relocation to Ghana. Without any evidence on this matter in the record, the AAO finds that there is insufficient evidence to show extreme hardship to the applicant's U.S. Citizen spouse upon relocation to Ghana.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to her U.S. Citizen spouse as required under section 212(a)(9)(B)(v) of the Act. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

In proceedings for a waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.