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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

[REDACTED]

DATE: **FEB 29 2012** OFFICE: ACCRA, GHANA FILE: [REDACTED]

IN RE: [REDACTED]

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

Michael Shumway

f. 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 (INA or the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for one year or more and seeking readmission within 10 years of departure from the United States. The applicant was also found inadmissible under INA § 212(a)(6)(C)(i), 8 U.S.C. § 1182(a)(6)(C)(i), for misrepresentation due to her use of another individual's passport and visa to gain admission to the United States. The applicant seeks a waiver of inadmissibility under INA § 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v), and INA § 212(i), 8 U.S.C. § 1182(i), in order to reside in the United States with her U.S. citizen spouse.

In a decision dated September 24, 2009, the Field Office Director concluded that the required standard of proof of extreme hardship to a qualifying relative was not met and the applicant's application for a waiver of inadmissibility was denied accordingly.

On appeal, counsel for the applicant states that the evidence establishes that the applicant's U.S. citizen spouse and child have suffered and continue to suffer extreme hardship in the applicant's absence and that the denial of the waiver application is arbitrary, capricious, and unreasonable. Applicant's counsel also states that USCIS has the authority to approve the applicant's case based solely on discretion. Counsel for the applicant does not address the applicant's inadmissibility under INA § 212(a)(6)(C)(i).

In support of the waiver application, the record includes, but is not limited to a brief by the applicant's counsel, a report from a licensed social worker, school records for the applicant's daughter, an affidavit from the applicant's spouse, federal income tax returns for the applicant's spouse, and documentation regarding the applicant's immigration history.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The applicant is inadmissible under INA § 212(a)(9)(B)(i)(II) for having been unlawfully present in the United States for one year or more.

Section 212(a)(9) of the Act provides:

(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.

(v) Waiver.-The Attorney General 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 Attorney General 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 Attorney General regarding a waiver under this clause.

The record reflects that the applicant entered the United States in 1995 using another individual's travel documents and remained in the United States until March 19, 2009. Unlawful presence considerations did not begin until the date of enactment of unlawful presence provisions under the Act on April 1, 1997. As such, the applicant accrued unlawful presence in the United States from April 1, 1997 until March 19, 2009. As the period of unlawful presence accrued is over one year, the applicant is inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for a period of 10 years from her departure from the United States in 2009. The applicant does not contest this finding of inadmissibility on appeal. The applicant is eligible to apply for a waiver of this ground of inadmissibility under INA § 212(a)(9)(B)(v), as the spouse of a U.S. citizen.

The Field Office Director also determined that the applicant was inadmissible under INA § 212(a)(6)(C), which 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.

...

The Field Office Director found that the applicant procured admission to the United States in 1995 by making a material misrepresentation when she used another individual's passport and visa at the port-of-entry. The applicant does not contest the inadmissibility finding on appeal and the AAO finds that the applicant is inadmissible under INA § 212(a)(6)(C)(i) for having procured admission to the United States through fraud or willful misrepresentation of a material fact.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states 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 section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a U.S. citizen or lawful permanent resident spouse or parent, the same standard as required under INA § 212(a)(9)(B)(v). In both cases, 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). On appeal, counsel for the applicant asserts that USCIS can approve the applicant's case based solely on discretion. This is not the case. Discretion is only taken into account once the applicant has met the standard for the waiver as set forth in INA § 212(a)(9)(B)(v) and INA § 212(i), which both require that the applicant establish to the satisfaction of the [Secretary] that the refusal of their admission would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 885 (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.*

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). 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.

The applicant’s qualifying relative in this case is her U.S. citizen spouse. The AAO notes that only hardship to the applicant’s spouse can be taken into account in the determination of extreme hardship. Although the applicant has a U.S. citizen child, and counsel for the applicant states that this child will suffer extreme hardship, it is noted that Congress did not include hardship to the applicant’s child as a factor to be considered in assessing extreme hardship in cases under INA § 212(a)(9)(B)(v) for waivers of unlawful presence or INA § 212(i) for waivers of fraud or misrepresentation. Hardship to the applicant or to the applicant’s child will not be separately considered, except as it is illustrated to affect the applicant’s spouse.

We will first consider the hardship claimed to the applicant’s spouse if he were to remain in the United States without the applicant. The applicant’s spouse states that he will suffer emotional hardship if he is separated from his wife due to the fact that they have been married for seven years, share a daughter together, and are “dependent on each other as all husband and wives are, not only for the physical, emotional, spiritual requirements, but also financially.” The applicant’s spouse states that his daughter “cries for her mother” and “her grades are beginning to demonstrate her emotional distress without her mother being present.” In support of this statement, the applicant’s spouse submitted copies of his daughter’s school records for the first and second quarter of the 2008-2009 academic year. The records submitted, however, do not reflect poor or worsening performance in school by the daughter. The record contains a report by [REDACTED] stating that the applicant’s spouse “suffers from knowing the implications” of the separation of his daughter from her mother and from “feeling hopeless to be able to change the situation.” The social worker’s report, however, does not support the applicant’s spouse’s

statement in his affidavit that he is experiencing anxiety and depression. The applicant's spouse's concern for his daughter's emotional and educational well-being is noted, but there is no evidence in the record to demonstrate that the hardship experienced by the applicant's spouse can be distinguished from the ordinary hardship suffered by individuals who are separated as a result of inadmissibility. Family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. But, 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. The fact of separation in and of itself is not extreme hardship, the applicant must show that the impact of the separation on her qualifying relative, in this case her U.S. citizen husband, is extreme.

The applicant's spouse states that he will also suffer financial hardship in his wife's absence, but he does not provide any documentation to support what impact his wife's absence will have on his finances. The record indicates that the applicant's spouse earned \$42,527 in 2008 and the applicant and her spouse report that the applicant did not work outside the home. The applicant's daughter's school records, however, indicate that the applicant was employed by "Centria" on May, 15, 2008. Although the social worker's report reflects that the applicant's spouse reported to her that he works the evening shift from 3-11pm, and that he reported to her that he will need to obtain childcare for his daughter as a result of his wife's absence, no independent evidence is provided to support the hours worked by the applicant's spouse or the cost of childcare to the applicant's spouse. Also, it is not explained in the record why the applicant's spouse is not able to work a daytime shift. The applicant's spouse also states that he supports his wife financially in Ghana, but no independent evidence is provided to illustrate the amount of money that he sends to his wife or the impact that support has on his financial well-being. From the evidence submitted, it is not possible to determine that the applicant's spouse will suffer financial hardship in her absence.

As to whether the applicant's spouse would suffer extreme hardship if he were to relocate to Ghana to reside with the applicant, the applicant's spouse states that he will suffer financial hardship due to the economy there and that he will suffer emotional hardship if his daughter is not able to continue her education in the United States. The applicant's spouse is a native of Ghana, and although he has resided in the United States since 1996, he does not provide any evidence to illustrate why he is not able to obtain employment in Ghana sufficient to support himself and his family. No evidence was submitted regarding the economic situation in Ghana as it relates the applicant's spouse, or of his educational and work history. The applicant's spouse also states that he has debt that he would not be able to pay in Ghana, but he did not provide any evidence of that debt or his inability to pay it if he were to reside in Ghana. The report submitted by [REDACTED] states that the applicant's spouse would experience a loss on his home if he would need to sell it in order to relocate to Ghana. There is no documentation in the record, however, of the purchase price or the current value of the home. [REDACTED] makes the conclusion that it is likely that the family would be "reduced to living in poverty" in Ghana, but there is no documentation in the record to support that assertion or explain why [REDACTED] is qualified to

make that assessment. The applicant's spouse also states that his daughter would be at a great disadvantage in Ghana as she "speaks mostly English." It is not clear, however, why speaking English would affect the daughter's educational prospects in Ghana. The AAO takes note that the official language of the educational system in Ghana is English. *Background Note: Ghana, U.S. Department of State*, dated December 21, 2011. [REDACTED] also states in her report that the applicant's daughter is a carrier for sickle cell anemia and that if the applicant's spouse were to move to Ghana and bring his daughter that she "may have to go without the iron supplements that she takes." In regards to this assertion, there is no documentation in the record from a qualified medical professional indicating that the applicant's daughter is a carrier for sickle cell anemia nor is there any evidence that she would not be able to obtain the care that she needs in Ghana. The AAO notes that even if that evidence were presented, the applicant would need to show how those factors result in extreme hardship to the qualifying relative, the applicant's spouse. Although the AAO is not insensitive to the applicant's spouse's difficult situation, the record does not establish that the hardships he would face rise to the level of "extreme" as contemplated by statute and case law.

Considered in the aggregate, the hardship to the applicant's spouse does not rise to the level of extreme beyond the common results of removal. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez*, 96 F.3d at 392 (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Matter of Pilch*, 21 I&N Dec. at 631. The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative under required under INA §§ 212(a)(9)(B)(v) and 212(i). Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section INA §§ 212(a)(9)(B)(v) and 212(i) 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.