



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

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

MATTER OF B-E-A-

DATE: OCT. 17, 2016

APPEAL OF SAN BERNARDINO, CALIFORNIA FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF  
INADMISSIBILITY

The Applicant, a native and citizen of Ghana, seeks a waiver of inadmissibility for unlawful presence. *See* Immigration and Nationality Act (the Act) section 212(a)(9)(B)(v), 8 U.S.C. § 1182(a)(9)(B)(v). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives.

The USCIS Field Office Director, San Bernardino, California, denied the Form I-601. The Director concluded that the Applicant did not establish that denial of admission would result in extreme hardship to her spouse.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and asserts that her spouse would experience extreme hardship if she was removed from the United States.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking to adjust status to that of a lawful permanent resident and has been found inadmissible for unlawful presence, specifically for accruing 1 year or more of unlawful presence and departing the United States. Section 212(a)(9)(B)(i)(II) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(II), provides that a foreign national who has been unlawfully present in the United States for 1 year or more, and who again seeks admission within 10 years of the date of departure or removal from the United States, is inadmissible. Section 212(a)(9)(B)(i)(I) of the Act, 8 U.S.C. § 1182(a)(9)(B)(i)(I), provides that a foreign national who was unlawfully present in the United States for a period of more than 180 days but less than 1 year, voluntarily departed the United States prior to the commencement of proceedings under section 235(b)(1) or section 240, and again seeks admission within 3 years of the date of such departure or removal, is inadmissible.

Section 212(a)(9)(B)(ii) of the Act, 8 U.S.C. § 1182(a)(9)(B)(ii), provides that a foreign national is deemed to be unlawfully present in the United States if present in the United States after the expiration of the period of authorized stay or is present in the United States without being admitted or paroled.

Section 212(a)(9)(B)(v) of the Act provides that section 212(a)(9)(B)(i) inadmissibility may be waived as a matter of discretion if refusal of admission would result in extreme hardship to a U.S. citizen or lawful permanent resident spouse or parent.

Decades of case law have contributed to the meaning of extreme hardship. The definition of extreme hardship “is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case.” *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists “only in cases of great actual and prospective injury.” *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; see also *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was “no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects”). The common consequences of removal or refusal of admission, which include “economic detriment . . . [,] loss of current employment, the inability to maintain one’s standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment,” are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); but see *Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

## II. ANALYSIS

The issues presented on appeal are whether the record establishes that the Applicant is inadmissible for unlawful presence of 1 year or more and whether the Applicant’s spouse would experience extreme hardship if the waiver is denied. Although the Applicant does not contest the finding of inadmissibility for unlawful presence under section 212(a)(9)(B)(i)(II) of the Act, the record reflects that she is inadmissible instead under section 212(a)(9)(B)(i)(I) of the Act, as she was unlawfully present for less than 1 year. Therefore she is only inadmissible for 3 years, instead of 10 years. The claimed hardship to the Applicant’s spouse consists of emotional hardship, including family separation; medical hardship; financial hardship; and hardship based on conditions in Ghana.

The evidence in the record, considered both individually and cumulatively, does not establish that the Applicant’s spouse would experience extreme hardship, whether he remains in the United States

or relocates to Ghana. The record does not contain sufficient evidence to establish much of the hardship claimed, and for the hardship demonstrated, the record does not show that it rises above the common consequences of removal or refusal of admission to the level of extreme hardship. Because there is no showing of extreme hardship, we will not address whether the Applicant merits a waiver as a matter of discretion.

A. Inadmissibility

As stated above, the Applicant was found inadmissible under section 212(a)(9)(B)(i)(II) of the Act for unlawful presence of 1 year or more. The record reflects that she was admitted into the United States with a B-1 visa on September 19, 2012, and she was authorized to stay in the United States until March 18, 2013. The record also reflects that she departed the United States on March 12, 2014. She accrued unlawful presence from March 19, 2013, the date she fell out of status, until March 12, 2014, the date she departed the United States, a period of less than 1 year. Therefore, she is not inadmissible for 10 years under section 212(a)(9)(B)(i)(II) of the Act, as she was not unlawfully present in the United States for 1 year or more. However, she is inadmissible for 3 years under section 212(a)(9)(B)(i)(I) of the Act, as her period of unlawful presence was between 180 days and 1 year.

B. Hardship

The Applicant must demonstrate that refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives, in this case the Applicant's spouse. With the Form I-601, the Applicant submitted a brief and a statement from her spouse. On appeal, the Applicant submits a brief and a medical letter.

With respect to hardship to the Applicant's spouse if he remains in the United States without the Applicant, the Applicant states that her 70 year-old spouse has medical issues, she will help him cope with his health situation and maintain their household, and the thought of separation is causing him psychological hardship. A neurologist's letter reflects the doctor had treated the Applicant's spouse for approximately 1 year and that his conditions include diabetes, hypertension, hyperlipidemia, diabetic renal manifestations, and left shoulder arthritis; he takes multiple medications; and he needs the continuous assistance that the Applicant provides. The Applicant's spouse states that in May 2012, he suffered a sudden and total loss of hearing, and the Applicant consoled him and provided the necessary medical care. The Applicant states that she sought treatment for him, and she left the United States after his recovery.

The Applicant also states that travel from the United States to Ghana, if her spouse were to visit her, will be unaffordable, and phone calls are expensive. She asserts that the cost of maintaining their household on only his income would limit their ability to stay connected. The record includes several utility bills and bank statements from 2015 that show amounts owed and balances. The Applicant's spouse also submitted a Form I-864, Affidavit of Support under Section 213A of the

Act, in which he noted his 2013 income was “0.” A signed letter from 2015 and his Form G-325A, Biographic Information, reflect that he has been retired since 2009.

The record reflects that the Applicant’s spouse has medical issues; however, the type and level of assistance the Applicant provides and the severity of her spouse’s conditions are not clear from the record. The record also is not clear as to whether he still has hearing loss, and if so, how he is managing this condition. The Applicant provides no supporting documentary evidence of her spouse’s claimed psychological hardship and of the expenses they could face if he were to remain in the United States, other than bills and bank statements, which do not reflect debt or other financial difficulty. In addition, the evidence of the Applicant’s spouse’s income, considered with the information provided on Form I-864, is unclear. The record does not contain any other evidence of hardship upon separation. While the record reflects that the Applicant’s spouse would experience hardship in her absence, it does not show that the hardship demonstrated, considered individually and cumulatively, rises to the level of extreme hardship.

Concerning hardship resulting from his relocation to Ghana, the Applicant, through counsel, states her spouse has resided in the United States since 1973, he is 70 years old; he has no family outside of the United States; he is “deeply immersed in . . . social and cultural life”; adjusting to living in Ghana would affect him emotionally and psychologically; he also would have difficulty adjusting to a new culture and climate; and he would “have to abandon” his children and grandchild, with whom he is extremely close and visits regularly. In addition, the Applicant, through counsel, states that her spouse has medical conditions, and medical care will not be available in Ghana. The Applicant, through counsel, also states that Ghana has “appalling social, economic, and health conditions”; it has a high crime rate that the police, because of corruption and understaffing, cannot control; he will not find comparable employment; and his children’s quality of life will be affected.

The record reflects that the Applicant’s spouse would experience difficulty in relocating to Ghana due to his age and long residence in the United States, which is supported by the Form G-325. However, the record does not include evidence, to corroborate counsel’s claims, of his claimed family relationships in the United States and his level of interaction with them. It also lacks supporting documentary evidence of the emotional and psychological impacts of relocating, the lack of available medical care in Ghana, the crime rate and issues with police in Ghana, the lack of employment opportunities in Ghana, and the effect of his relocation on his children. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In addition, the Applicant’s claim that her spouse would not be able to find “comparable employment” is inconsistent with her spouse’s Form G-325A, which reflects that he is retired. Thus, while the record reflects that the Applicant’s spouse would experience hardship upon relocation to Ghana, it does not show that the hardship demonstrated, considered individually and cumulatively, rises to the level of extreme hardship.

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C. Discretion

As the Applicant has not demonstrated extreme hardship to a qualifying relative, we need not consider whether the Applicant warrants a waiver in the exercise of discretion.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. *See* section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden, as she has not established extreme hardship to her U.S. citizen spouse as a result of her inadmissibility. Accordingly, we dismiss the appeal.

**ORDER:** The appeal is dismissed.

Cite as *Matter of B-E-A-*, ID# 117090 (AAO Oct. 17, 2016)