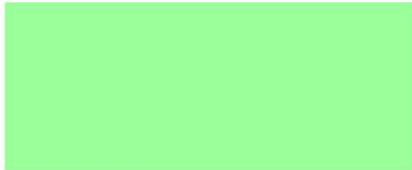




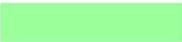
U.S. Citizenship  
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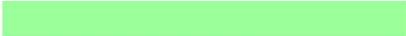
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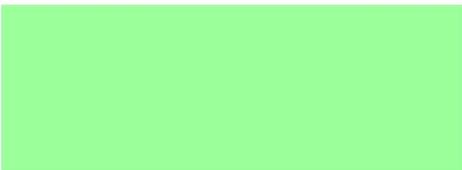
Office: ROME

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to Section 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(i)

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 "Michael Shumway".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Rome, Italy, 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 currently resides in Italy. He was found to be inadmissible to the United States under 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 attempted to procure admission to the United States through fraud or misrepresentation. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to reside in the United States with his U.S. citizen spouse.

The field office director concluded that the applicant had failed to demonstrate extreme hardship to his qualifying spouse and denied the application accordingly. *See Decision of Field Office Director*, dated October 15, 2012.

On appeal, counsel for the applicant asserts that the field office director failed to “acknowledge the de minimus nature of the alleged misrepresentation by the applicant.” *Form I-290B*, dated November 13, 2012. Furthermore, counsel alleges that the field office director erred in finding that the qualifying spouse would not suffer extreme hardship if the waiver application were denied. *Id.*

The record includes, but is not limited to: a statement from the qualifying spouse; medical records relating to the qualifying spouse; and photographs of the applicant and the qualifying spouse. The entire record was reviewed and considered in rendering a decision on the appeal.

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.

The applicant appears to contest the finding of inadmissibility on appeal. Counsel contends that the applicant’s “alleged misrepresentation” was “de minimus.” Counsel explains that in a non-immigrant visa application filed in 2007, the applicant listed his now qualifying spouse, who was then his girlfriend, as his “sister.” Counsel notes that the applicant did not gain a benefit through his misrepresentation because the visa application was denied. Furthermore, counsel states that according to the qualifying spouse, who is also from Ghana, “in the Ghan[a]ian culture it is not uncommon for someone to refer to their close friends as their ‘brother’ or ‘sister.’ This use constitutes a term of endearment and is not meant to be taken literally.” *Form I-290B*. The qualifying spouse also asserts that on July 12, 2007, she was anxious for the applicant to join her in the United States so she submitted a letter to the consulate in Italy in which she stated that the applicant was her brother and requested that he be granted a visa. She alleges that when she used

the term “brother,” she did not intend to state that the applicant was her biological brother. Instead, “It was used as a term of endearment and respect that i[s] customary in Ghana.” *Affidavit of Cynthia S. Ofori*, dated March 21, 2012.

Pursuant to section 291 of the Act, the applicant bears the burden of demonstrating by a preponderance of the evidence that he is not inadmissible. *See also Matter of Arthur*, 16 I&N Dec. 558, 560 (BIA 1978). Where the evidence for and against admissibility “is of equal probative weight,” the applicant cannot meet his burden of proof. *Matter of Rivero-Diaz*, 12 I&N Dec. 475, 476 (BIA 1967) (citing *Matter of M--*, 3 I&N Dec. 777, 781 (BIA 1949)).

The AAO finds that the applicant has failed to demonstrate that the finding of inadmissibility is incorrect. On September 13, 2007, the applicant filed a Nonimmigrant Visa Application in which he indicated that the purpose of his trip was a “family visit” and that his sister had lawful status in the United States. The applicant has not explained why he stated that he was planning to visit family when he did not yet have a family relationship with the qualifying spouse and intended to use the word “sister” as a synonym for “friend.” Additionally, he indicated on his visa application in 2007 that he was married to [REDACTED]. However, the applicant and [REDACTED] had divorced in 1999. Furthermore, the record indicates that during an interview in 2011 with the Vice Consul in Naples, Italy, the applicant admitted that the purpose of his 2007 nonimmigrant visa application was to marry his now qualifying spouse in the United States. He also admitted that during a 2007 interview in Milan regarding his nonimmigrant visa application, he lied in order to obtain a visa.

Although there is no “de minimis” exception, section 212(a)(6)(C) does require that the fraud or misrepresentation be material. *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). To be material, 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 fact that the applicant did not succeed in obtaining the visa is not necessarily dispositive to the issue of materiality, so long as the misrepresentation was predictably capable of affecting the official decision. In the present matter, that applicant applied for a non-immigrant visa, for which non-immigrant intent is a requirement. The applicant’s misrepresentations concerning his marriage and the nature of his relationship with the person he would visit in the United States were significantly more capable of demonstrating such intent, as compared to the true fact that he meant to visit and marry a U.S. citizen. Therefore, we will not disturb the finding that the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act.

The applicant is eligible to apply for a waiver under section 212(i) of the Act as the spouse of a U.S. citizen. 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.

Section 212(i) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (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 of Immigration Appeals (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 U.S. 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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.

On appeal, counsel claims that the field office director failed to consider the medical condition of the qualifying spouse, particularly the fact that she has twice undergone surgery for fibroids. Counsel also alleges that the field office director failed to consider the qualifying spouse’s desire to have children. Counsel states that separation from the applicant would permanently prevent the qualifying spouse from having a family and that “[i]t would be unreasonable to expect [the qualifying spouse] to raise her children as a single parent.”

The qualifying spouse states that she was born in Ghana and became a naturalized U.S. citizen on May 22, 2007. She and the applicant were married in Ghana on August 28, 2009, after a long-distance relationship of approximately nine years. The qualifying spouse contends that she would face extreme hardship if the applicant’s waiver application were denied. She states that she wants to have children but that she is 39 years old and fears that she will be unable to have children if the applicant is not permitted to come to the United States. She also asserts that she suffers from high blood pressure, for which she has received regular medical care and medication since 2005. Also, she notes that she has fibroids which cause her a great deal of pain. She had surgery to remove the fibroids in 2006 but they returned, so she was scheduled for a second surgery on April 4, 2012. The qualifying spouse also states that she has experienced “anxiety and stress” over the possibility that the applicant will be unable to reside with her in the United States. She asserts that she and the applicant have a very close relationship and that he provides her with emotional support. She states that she has lost weight and that the stress of the applicant’s immigration situation “has taken a physical toll” on her.

The qualifying spouse asserts that she would be unable to relocate to Italy, where the applicant currently resides. She states that she works as a “cottage training technician” at the [REDACTED] and as a Certified Nursing Assistant at [REDACTED] and that she would be forced to leave her jobs if she were to relocate. She fears that she would be unable to find employment in Italy because she does not speak Italian. Additionally, she states that the applicant would be unable to support both of them on his salary as a truck driver. Furthermore, the qualifying spouse notes that she has lived in the United States for over ten years and has become accustomed to the lifestyle and culture here, so she would have trouble adjusting to life in Italy. She also has close family ties in the United States, including her U.S. citizen father, 11 siblings, and aunts, uncles, and cousins.

The record contains an undated letter indicating that the applicant suffers from fibroids and was scheduled for surgery on April 4, 2012. Her recovery time was estimated to be five to six weeks. The doctor also noted that the qualifying spouse had surgery for fibroids in February 2006. *See Letter from [REDACTED] Medical records from [REDACTED] confirm that the qualifying spouse underwent surgery to remove uterine fibroids on February 23, 2006 and “left the OR in apparent good condition.” See Operative Record, [REDACTED] MD, dated February 27, 2006.*

The applicant has failed to demonstrate that his qualifying spouse would face extreme hardship if she continued to be separated from the applicant. Although the qualifying spouse claims that she needs the applicant’s support, there is no indication that the applicant and the qualifying spouse have ever lived together. The record does not clearly indicate whether the qualifying spouse lives alone or with relatives, but there is no indication that she requires the applicant’s financial assistance or is otherwise unable to support or care for herself. We note that the qualifying spouse has two jobs and does not claim that she cannot support herself. Additionally, while the record indicates that the qualifying spouse has had two surgeries for uterine fibroids, there is no evidence that she requires the applicant’s care due to her medical condition. The medical records do not state that the qualifying spouse experienced any complications due to her surgeries, that she lacked appropriate care during her recovery, or that she has been unable to work or carry out other responsibilities due to her fibroids.

We acknowledge that the qualifying spouse hopes to have children with the applicant and fears that she will be unable to do so if his waiver application is denied. She has also expressed concerns regarding anxiety and stress relating to the applicant’s immigration situation. These concerns amount to a claim of emotional hardship. The record lacks evidence to show that the emotional difficulties the qualifying spouse will experience on continued separation from the applicant would rise to the level of extreme hardship. There is no indication that she has required treatment for her emotional problems or that her stress and anxiety have interfered with her ability to work or care for herself. Even when considered in the aggregate, the evidence is insufficient to show that any emotional hardship the qualifying spouse might experience would rise above that which is normally expected from the removal or inadmissibility of a close family

member. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of O-J-O*, 21 I&N Dec. at 383.

The AAO does find that the qualifying spouse would experience extreme hardship if she were to relocate to Italy. The qualifying spouse has resided in the United States since 2001 and she has been a U.S. citizen for over six years. She has become accustomed to life in the United States, holds two jobs here, and has numerous close family members in the United States. Additionally, the qualifying spouse does not speak Italian and is unfamiliar with the culture in Italy, so relocation would likely be very difficult for her. However, the applicant has not alleged that his qualifying spouse would be unable to relocate with him to Ghana, his country of citizenship. Both the applicant and the qualifying spouse are originally from Ghana, so they are undoubtedly familiar with the culture and lifestyle there. The record contains no evidence to suggest that they would be unable to relocate there together, or what the specific hardships there would be. As the applicant has not shown that he is a citizen of Italy, or detailed his long-term prospects for remaining there lawfully, we find that it is appropriate to also evaluate this case on the basis of hardship upon relocation to Ghana.

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 an application for waiver of grounds of inadmissibility under section 212(i) 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.