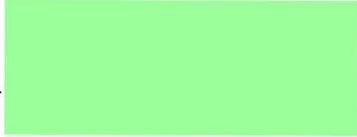




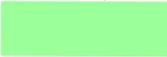
**U.S. Citizenship
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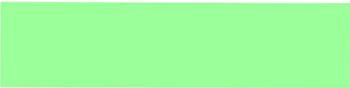
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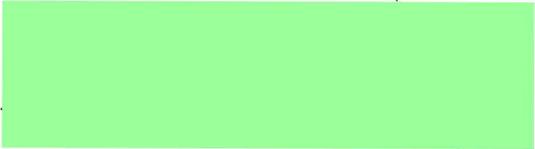
Office: BALTIMORE, MD

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:



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.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Baltimore, Maryland, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and a citizen of Ghana who was found to be inadmissible to the United States under 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 admission within 10 years of his last departure; and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission to the United States through fraud or misrepresentation. The applicant is the spouse of a U.S. citizen and is the beneficiary of an approved Form I-130, Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to sections 212(a)(9)(B)(v) and section 212(i) of the Act, 8 U.S.C. §§ 1182(a)(9)(B)(v) and 1182(i), in order to remain in the United States with his U.S. citizen spouse.

The 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. *See Field Office Director's Decision*, dated September 19, 2011.

On appeal, counsel asserts that the director erred in denying the applicant's waiver application and failed to consider the impact of financial and emotional hardship on the applicant's spouse. *See Form I-290B, Notice of Appeal or Motion*, dated October 13, 2011. In a separate brief, counsel also contests the applicant's inadmissibility under both sections of the Act.

The evidence of record includes, but is not limited to: briefs from the applicant's current and former counsel, statements from the applicant's spouse and parents-in-law, a psychological evaluation of the applicant's spouse, medical documentation for the applicant's spouse, financial documents, family photographs, information regarding country conditions in Ghana, medical articles, and copies of relationship and identification documents.

We will first address the applicant's inadmissibility pursuant to section 212(a)(9)(B)(i)(II) of the Act.

The record indicates that the applicant entered the United States as a non-immigrant visitor on December 1, 2002; he was admitted until January 15, 2003. The applicant departed the United States in 2008 based on a grant of advance parole that was filed because of his pending Form I-485, Application to Register Permanent Residence or Adjust Status (Form I-485). He was paroled into the United States on February 1, 2008. Upon adjudication of his Form I-485, the director found the applicant inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Act for having been unlawfully present in the United States for more than one year and seeking admission within 10 years of his last departure.

Section 212(a)(9) states 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 Attorney General or is present in the United States without being admitted or paroled.

In *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012), the Board of Immigration Appeals (BIA) held that an applicant for adjustment of status who left the United States temporarily pursuant to advance parole under section 212(d)(5)(A) of the Act did not make a departure from the United States within the meaning of section 212(a)(9)(B)(i)(II) of the Act. Here, the applicant obtained advance parole under section 212(d)(5)(A) of the Act, temporarily left the United States pursuant to that grant of advance parole, and was paroled into the United States. In accordance with the BIA's decision in *Matter of Arrabally*, the applicant did not make a departure from the United States for the purposes of section 212(a)(9)(B)(i)(II) of the Act. Accordingly, the applicant is not inadmissible under section 212(a)(9)(B)(i)(II) of the Act.

Next, we will address the applicant's inadmissibility pursuant to section 212(a)(6)(C)(i) of the Act.

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 director also found the applicant inadmissible for failing to disclose his customary marriage to [REDACTED] to a U.S. consular officer when he applied for his nonimmigrant visa in 2002. The record also indicates that on Form G-325A, Biographic Information, dated July 7, 2005, the applicant responded "none" to the question asking about previous marriages. Moreover, the Form I-130 filed on the applicant's behalf by his spouse also indicates that the applicant was never

previously married. According to the applicant, he and [REDACTED] were living in England at the time the customary marriage and divorce took place, and neither he nor [REDACTED] was present for the ceremony in Ghana. However, the applicant's counsel asserts that the applicant did not make a material misrepresentation because he "never considered himself legally and lawfully married or divorced." Counsel states that the applicant and [REDACTED] never held themselves out as legally married; therefore, the applicant believes that claiming he was previously married and divorced would have been legally incorrect. Counsel also asserts that the director failed to prove that the applicant willfully misrepresented or concealed a material fact to seek or procure an immigration benefit. We note that in proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. See section 291 of the Act, 8 U.S.C. § 1361. The applicant does not dispute that he did not reveal his customary marriage before marrying the qualifying relative in the instant case. He claims, however, that his misrepresentation is not material.

A misrepresentation is generally material only if by making 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 must be shown by clear, unequivocal, and convincing evidence to be predictably capable of affecting, which is, having a natural tendency to affect, the official decision in order to be considered material. *Kungys* 495 U.S. 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).

The AAO notes that the applicant's misrepresentation of his marital status was material, as it shut off a line of inquiry that was relevant to determining his eligibility as an alien relative, because his petition is based on his marriage to a U.S. citizen. The AAO finds counsel's assertion that the applicant timely retracted his misrepresentation by admitting to his customary marriage during his adjustment interview unpersuasive. The applicant misrepresented material facts about his customary marriage on forms associated with his adjustment application and did not reveal his customary marriage until he was questioned by an immigration officer. As such, the AAO finds the applicant to be inadmissible under section 212(a)(6)(C)(i) of the Act.

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.

Sections 212(i) of the Act provide 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).

The record contains references to hardship the applicant's in-laws would experience if the waiver application were denied. It is noted that Congress did not include hardship to an alien's extended family as factors to be considered in assessing extreme hardship. In the present case, the applicant's spouse is the only qualifying relative for the waiver under section 212(i) of the Act, and hardships to the applicant's in-laws will not be separately considered, except as they may affect the applicant's 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, 631-32 (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, “[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., 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). 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 AAO now turns to the question of whether the applicant in the present case has established that his qualifying relative would experience extreme hardship as a result of his inadmissibility.

On appeal, counsel states that the applicant’s spouse would experience extreme hardship if she accompanies the applicant to Ghana, because she has family only in the United States and has never lived outside of the United States. Counsel further states that the applicant and his spouse are unlikely to find employment there. They would lose their medical insurance and would be unable to pay for her medical care. The record indicates that the applicant’s spouse has received fertility treatments and takes medication to control her hypertension. She also has been diagnosed with anxiety disorder and post-traumatic stress disorder. Counsel also states that separation from the applicant would take away the “only stability” in the applicant’s spouse’s life and would adversely affect her health.

The applicant’s spouse states that she suffers from anxiety and that she feels depressed and overwhelmed at times. She also states that stress caused by her infertility coupled with her worries about her family play a factor in her hypertension. She indicates that she was abused and abandoned as a child, and now the applicant provides her with stability. Her mother and father, who have serious medical conditions, also rely on the applicant for help in getting to their medical appointments. The applicant’s mother-in-law states that the applicant oversees her financial affairs and helps her with groceries and other transportation needs. The applicant’s father-in-law also

states that he depends on the applicant and his daughter for his transportation needs; they take him to his medical appointments and also shop for him and manage his financial affairs. The record indicates that the applicant's father-in-law has multiple medical problems, including chronic kidney disease, anemia, hypertension, cirrhosis, and congestive heart failure. The applicant's spouse is concerned that she would be unable to assist her parents without the applicant.

indicates that the applicant's spouse has generalized anxiety disorder and post-traumatic stress syndrome. The applicant's spouse reported to that she has been seeing mental healthcare providers since she was six years old. She has severe anxiety, palpitations, shortness of breath, and difficulty focusing. states that the applicant's spouse's symptoms worsen when she is alone; her conditions stem from being sexually abused as a child and abandoned by her father at a young age. She was also abandoned by her mother later in life because of her mother's mental illness. According to the applicant's spouse would have difficulty coping with her present life circumstances, because the applicant is the "major source of overcoming her anxiety." also states that relocating and separating from her ailing parents and worrying about them would cause extreme emotional hardship to the applicant's spouse. states the applicant's spouse needs to see a psychiatrist and therapist, but health care in Ghana is not as well-developed as it is in the United States.

The record indicates that the applicant's spouse earns approximately \$40,000 annually at her full-time job and that she has worked for the same company for 17 years. The applicant's annual salary is over \$56,000, and he also owns a business. The applicant submits a detailed list of their household expenses, indicating that the applicant's spouse's income alone would be insufficient to cover her expenses. The record contains copies of their household bills and debt corroborating claims about their expenses. The record also contains copies of money transfers to the applicant's children in England and his family in Ghana, demonstrating his additional financial responsibilities. The applicant's spouse is concerned that without the applicant's financial contribution, she would not be able to assist her family.

With respect to relocating to Ghana with the applicant, the applicant's spouse states that she would not be able to find employment because she does not speak "the local language." She also is concerned that she would not be able to continue with fertility treatments, which her insurance covers. The applicant submits country-specific information for Ghana prepared by the Department of State in 2010 indicating that medical facilities in Ghana are limited. The applicant's spouse is also concerned about leaving her family and feeling insecure and isolated in Ghana.

Having reviewed the preceding evidence, the AAO finds it to establish that the applicant's spouse would experience extreme hardship resulting from separation. In reaching this conclusion, we note the applicant's spouse's emotional and medical condition, as well as her reliance on the applicant's financial contribution to their household income. The applicant is her main source of emotional support. Furthermore, the record corroborates the applicant's spouse's claim that her household income would significantly decrease without the applicant's financial contribution, and her income alone would be insufficient to cover their household expenses. Moreover, the applicant's in-laws depend on the applicant and his spouse for transportation and handling their finances, and the

applicant's spouse is concerned that she could not assist them without the applicant, adding to her emotional hardship. Therefore, the AAO concludes that the evidence in the record, considered in the aggregate, establishes the hardship the applicant's spouse would experience if they were to separate would rise to the level of extreme.

The AAO also finds the record to establish that the applicant's spouse would experience extreme hardship if she were to relocate to Ghana. We note that the applicant's spouse is not a native of Ghana and has no family there. Also, although English is the official language of Ghana, the applicant's spouse claims she is not proficient in the local language used by the applicant, and she is concerned about being unable to find employment. Her doctor recommends that she continue to receive mental healthcare and communication problems would hinder her treatment. The applicant's spouse is also concerned about her ability to continue her fertility treatment there due to limited healthcare resources and losing the medical insurance they have in the United States. Furthermore, she has never lived outside of the United States, where she has close family ties. She assists her mother and father, who have serious medical conditions and depend on her for care, transportation, and emotional support; being away from them would cause additional emotional hardship to the applicant's spouse. Therefore, the AAO concludes, considering the evidence in the aggregate, the hardship the applicant's spouse would experience, should he relocate, would rise to the level of extreme.

When the specific hardship factors noted above and the hardships routinely created by the separation of families are considered in the aggregate, the AAO finds that the applicant has established that his spouse would face extreme hardship if the applicant's waiver request is denied. The applicant has established statutory eligibility for a waiver of his inadmissibility under section 212(i) of the Act.

In that the applicant has established that the bar to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

In evaluating whether . . . relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to

the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

See Matter of Mendez, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300 (citations omitted).

The adverse factor in the present case is the applicant's material misrepresentation to obtain admission to the United States. The mitigating factors include the applicant's U.S. citizen spouse, the extreme hardship to his spouse if the waiver application is denied, the absence of a criminal record for the applicant; his good character as described by his spouse and his in-laws, and his history of stable employment in the United States.

The AAO finds that the immigration violation committed by the applicant is serious in nature and cannot be condoned. Nevertheless, when taken together, the mitigating factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In discretionary matters, the applicant bears the full burden of proving his or her eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.