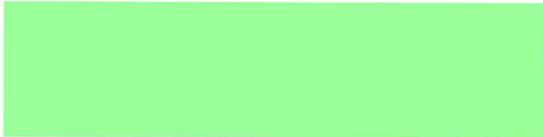




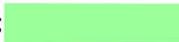
**U.S. Citizenship  
and Immigration  
Services**

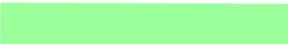
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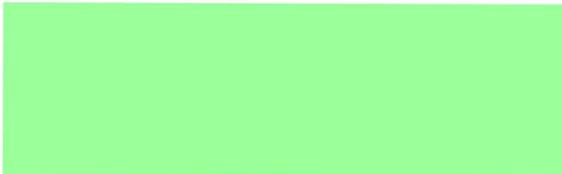
Office: WASHINGTON, D.C.

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(i) of the Immigration and Nationality Act (the 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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Officer Director, Washington D.C. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Ghana who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act in order to reside with his wife and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly.

On appeal, counsel contends the applicant established extreme hardship, particularly considering his wife's emotional disorder and country conditions in Ghana.

The record contains, *inter alia*: a copy of the marriage certificate of the applicant and his wife, indicating they were married on January 10, 2003; copies of the birth certificates of the couple's two U.S. citizen children; an affidavit from the applicant; two affidavits from letters of support; an affidavit from a psychologist; articles addressing country conditions in Ghana; copies of tax records, bills, and other financial documents; a letter from physician; a letter from the couple's children's physician; letters from the applicant's and employers; letters and other documents from the couple's children's school; and an approved Petition for Alien Relative (Form I-130). The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C)(i) of the Act provides:

In general.—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) provides, in pertinent part:

(1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant 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 permanent resident spouse or parent of such an alien . . . .

In this case, the record shows, and the applicant concedes, that he used his brother's passport and visa to enter the United States in October 2007. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for willful misrepresentation of a material fact in order to procure an immigration benefit.

The record also shows that in November 2010, the applicant was convicted of petit larceny. The field office director did not address whether or not this conviction is a crime involving moral turpitude rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act. Nevertheless, because the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act and demonstrating eligibility for a waiver under section 212(i) also satisfies the requirements for a waiver of criminal grounds of inadmissibility under section 212(h), the AAO will not determine whether the applicant is also inadmissible under section 212(a)(2)(A)(i)(I).

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.

In this case, the applicant's wife, [REDACTED] states that she struggles with depression and feelings of hopelessness, and takes medication to cope with her stress and emotional anguish. According to [REDACTED] she cannot afford regular therapy sessions due to financial hardship, although she occasionally speaks to a therapist on the telephone. She states that being separated from her husband would make life hopeless and unbearable. In addition, [REDACTED] states that she and her husband have had to file for bankruptcy. She contends they were sued by numerous creditors and their house was put into foreclosure proceedings. According to [REDACTED] her husband was the family's main source of income until he was unable to work and her income alone is not enough to support the family. She contends that after her husband's employment authorization was approved, he has resumed working. Furthermore, she states that their daughter, [REDACTED], has developed many problematic behaviors, breaking down and crying in school as often as three times a day. According to [REDACTED] teachers have reported that [REDACTED] has difficulty playing and interacting with other students and has delays in reading comprehension and speech.

After a careful review of the entire record, the AAO finds that if the applicant's wife, [REDACTED] remains in the United States without her husband, she would suffer extreme hardship. The record contains an affidavit from a psychologist diagnosing [REDACTED] with Adjustment Disorder with Mixed Anxiety and Depressed Mood and stating that she has developed suicidal ideation. According to the psychologist, being separated from her husband would exacerbate her mental health issues and develop into Major Depressive Disorder. A letter from [REDACTED] physician indicates that she is taking a prescription medication for Generalized Anxiety Disorder and Depression. In addition, the psychologist diagnosed [REDACTED] with Attention Deficit Hyperactivity Disorder and noted that the applicant is much more effective in trying to control her than [REDACTED]. The record also contains documentation from [REDACTED] teachers corroborating [REDACTED] claims regarding [REDACTED] stating that [REDACTED] cries approximately three times daily, needs one-on-one instruction to remain on task, is unable to answer simple reading comprehension questions, has difficulty with peer relationships, and has difficulty walking into school safely, often wandering back and forth between the bus and the front door. The AAO acknowledges [REDACTED] contention that she needs her husband's support in caring for their two children, particularly [REDACTED]. Moreover, the record contains evidence that the

applicant and his wife filed for bankruptcy in June 2011. The AAO acknowledges the extreme financial hardship [REDACTED] would suffer if she remains in the United States without her husband. Considering these unique circumstances cumulatively, the AAO finds that the hardship the applicant's wife would experience if she remains in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

The AAO also finds that if the applicant's wife returned to Ghana to be with her husband, she would experience extreme hardship. According to the psychologist, the couple's daughters were visiting their grandparents in Ghana, became sick multiple times, and a doctor recommended they return to the United States. A letter from a physician in Ghana confirms this claim, indicating that the children were diagnosed as having protein energy malnutrition and were seen at the hospital on several occasions with various kinds of conditions, all related to the change of environment and diet. The physician recommended the children return to the United States. Moreover, the AAO acknowledges that [REDACTED] has lived in the United States her entire adult life, since she was sixteen years old, and that readjusting to living in Ghana would be difficult, particularly considering her daughter's Attention Deficit Hyperactivity Disorder. Considering all of these factors cumulatively, the AAO finds that the hardship [REDACTED] would experience if she returned to Ghana to be with her husband is extreme, going well beyond those hardships ordinarily associated with inadmissibility or exclusion.

The AAO also finds that the applicant merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957). The adverse factors in the present case include the applicant's misrepresentation of a material fact to procure an immigration benefit, periods of unauthorized presence and employment, and his conviction of petit larceny. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including his U.S. citizen wife and two U.S. citizen children; the extreme hardship to the applicant's entire family if he were refused admission; letters of support describing the applicant as a compassionate, hardworking, responsible, and dependable person; and the fact that the applicant purportedly expressed remorse for his conviction and successfully completed all post-conviction requirements, including re-paying Walmart \$48.97 and paying a fine of \$100.

The AAO finds that, although the applicant's immigration violation and conviction are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.