



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

(b)(6)

DATE: **MAY 13 2013** OFFICE: WASHINGTON FIELD OFFICE FILE: [REDACTED]

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act, 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 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 "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

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

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to enter the United States through fraud or willful misrepresentation of a material fact. He seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), in order to remain in the United States with his U.S. citizen spouse and daughter.

The Field Office Director found that the applicant had failed to establish that his qualifying spouse would suffer extreme hardship if the waiver application were denied. Accordingly, the Field Office Director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility. *Field Office Director's Decision*, dated August 26, 2011.

On appeal, counsel for the applicant contends that the Field Office Director erred in finding the applicant inadmissible under section 212(a)(6)(C)(i) of the Act. She states that because the applicant was a minor at the time he presented a photo-switched passport in an attempt to enter the United States, he lacked the capacity to commit fraud or to make a willful misrepresentation of a material fact. Additionally, counsel asserts that even if the applicant were inadmissible, he has established that his qualifying spouse would suffer extreme hardship if his waiver application were denied. Counsel alleges that in denying the waiver application, the Field Office Director failed to consider certain hardship factors relating to the applicant's qualifying spouse, failed to consider the factors in the aggregate, and considered irrelevant facts. Finally, counsel contends that the applicant merits a waiver in the exercise of discretion. *See Counsel's Brief*.

The record includes, but is not limited to: statements from the applicant and his qualifying spouse; statements from the applicant's sister and three of his friends; a psychological evaluation regarding the qualifying spouse; country conditions information; financial records; documentation regarding the qualifying spouse's education and career in nursing; records regarding the applicant's education in the United States; and a copy of the applicant's daughter's birth certificate. The entire record was reviewed and all relevant information considered in reaching a decision on the appeal.

The applicant contests the finding of inadmissibility on appeal. Pursuant to section 291 of the Act, he 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)).

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.

In the present case, the record reflects that, on September 8, 2001, the applicant, then 15 years old, arrived at the John F. Kennedy (JFK) International Airport and presented a photo-switched Ghanaian passport and U.S. visitor's visa in the name of [REDACTED]. He was referred to secondary inspection, where he issued a sworn statement indicating that he was the rightful bearer of the passport, that he had applied for the visa in person at the U.S. Embassy in Ghana, and that he had previously visited the United States as a tourist. Later that same day, the applicant gave a second sworn statement in which he admitted his true identity, conceded that the passport and visa did not belong to him, and stated that he had lied in his first sworn statement.

On appeal, counsel for the applicant alleges that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act for making a willful misrepresentation of a material fact. Counsel states that because the applicant was 15 years old at the time he applied for entry, he did not have the legal capacity to make a willful misrepresentation of material fact. Counsel also asserts that the applicant timely retracted his misstatements, thereby negating any material misrepresentation he had made. Additionally, counsel contends that the applicant did not obtain any benefit through his misstatements and therefore is not subject to the inadmissibility ground under section 212(a)(6)(C)(i) of the Act.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO will first address the question of whether the applicant is admissible to the United States.

Counsel asserts that the applicant lacked the legal capacity to make a willful misrepresentation because he was a minor. However, there is no statutory exception for minors to inadmissibility under section 212(a)(6)(C)(i) of the Act. Where a provision is included in one section of law but not in another, it is presumed that Congress acted intentionally and purposefully. *See In re Jung Tae Suh*, 23 I&N Dec. 626 (BIA 2003) (citing *Matter of Rodriguez-Rodriguez*, 22 I&N Dec. 991 (BIA 1999)). Unlike section 212(a)(6)(C)(i), two other grounds of inadmissibility in section 212(a) contain express exceptions for minors. An exception is provided under section 212(a)(2)(A)(ii)(I) of the Act for individuals who, prior to turning 18, committed a single crime involving moral turpitude more than five years prior to applying for admission. Also, individuals who are under 18 do not accrue unlawful presence pursuant to section 212(a)(9)(B)(iii)(I) of the Act. By comparison, section 212(a)(6)(C)(i) of the Act provides for the inadmissibility of "any alien" who commits fraud or willful misrepresentation of a material fact in an attempt to gain a benefit. The sub-clause does not include an age-based exception, and the AAO cannot assume such an exception was intended. For this reason, the fact that the applicant was only 15 when he made the material misrepresentations is not, by itself, enough to establish that he is not inadmissible.

Nor, however, is his age completely irrelevant. As the Supreme Court has noted, “A child’s age is far ‘more than a chronological fact.’ . . . It is a fact that ‘generates commonsense conclusions about behavior and perception.’” *J.D.B. v. N. Carolina*, 131 S. Ct. 2394, 2403 (2011) (internal citations omitted). Fraud consists of “false representations of a material fact made with knowledge of its falsity and with intent to deceive.” See *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). In the immigration context, a finding of fraud requires that an individual “know the falsity of his or her statement, intend to deceive the Government official, and succeed in this deception.” *In re Tijam*, 22 I&N Dec. 408, 424-25 (BIA 1998). Willful misrepresentation does not require an intent to deceive, but instead requires only the knowledge that the representation is false. See *Parlak v. Holder*, 57 F.3d 457 (6th Cir. 2009) (citing to *Witter v. INS*, 113 F.3d 549, 554 (5th Cir. 1997); see also *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995); *In re Tijam*, *supra*. “The element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary.” See *Mwongera*, *supra*.

Therefore, when assessing a claim that an applicant lacked capacity to incur inadmissibility due to his or her minor age at the time of the misrepresentation, the adjudicator must weigh the totality of the circumstances presented in the evidence of record and determine whether the applicant possessed the maturity and judgment to comprehend both the falsity, and the potential consequences of, a false statement. Based on this understanding, the AAO finds that an evaluation of whether an applicant who made a material misrepresentation while under the age of 18 possessed, at the time, the capacity to make a willful misrepresentation of a material fact must be the result of an individualized inquiry into that particular applicant’s maturity level and ability to understand the nature and consequences of his false statement. The applicant bears the burden of demonstrating that he is not inadmissible under section 212(a)(6)(C)(i) of the Act. Section 291 of the Act, 8 U.S.C. § 1361. Therefore, he has the burden to prove that, when he made the material misrepresentations, he lacked capacity to willfully misrepresent a material fact.

In *Singh v. Gonzales*, the Sixth Circuit Court of Appeals found that the immigration fraud committed by the parents of a five-year-old child could not be imputed to her because fraudulent conduct “necessarily includes both knowledge of falsity and an intent to deceive” and requires proof of such. 451 F.3d 400, 407 (6th Cir. 2006). The Sixth Circuit found that imputing fraud to a five-year-old child was “even further beyond the pale” than imputing a parent’s negligence to that child. *Id.* at 407. However, in *Malik v. Mukasey*, the Seventh Circuit Court of Appeals found that two 17-year-old brothers whose father had misrepresented their identities, nationality, and religious affiliation when he listed them as derivatives on his asylum application, could be held accountable for that fraud. 546 F.3d 890, 892-893 (7th Cir. 2008). While the brothers contended that the immigration judge had erred by imputing their father’s fraud to them, the court concluded that the brothers, “given their ages at the time” as well as the fact that they had actively participated in perpetuating the false information, were accountable for the misrepresentations. The court also noted that the Board had previously acknowledged that while the brothers were young at the time their father filed for asylum, “they were old enough to know better and to be held accountable for their actions.” 546 F.3d 890, 892 (7th Cir. 2008).

The age of the applicant in the present case falls much closer to that of the 17-year-old brothers in *Malik* than to that of the five-year-old child in *Singh*. At 15 years of age, the applicant

certainly would have been considerably more cognizant of his misrepresentations than a five-year-old child whose parents had misrepresented her immigration status on her behalf.

Furthermore, unlike the brothers in *Malik*, the applicant in this case acted alone and presented a detailed false statement in an attempt to gain entry as an impostor. He presented himself as a visitor with a valid visa at the JFK International Airport and the record does not indicate that any other person influenced his actions. The transcript of the first of two sworn statements he gave on September 8, 2001, indicates that he maintained that he was [REDACTED] that he was born on October 4, 1985, and that he was coming to the United States for a three-week vacation. When asked about the circumstances under which he obtained the visa, the applicant stated the following:

Q. When did you obtain this visa?

A. April 18, 2000

Q. What is the address of the U.S. Embassy in Ghana?

A. I don't know

Q. Did you meet with a representative or consular official from the U.S. Embassy?

A. Of course

Q. What is the name of the person whom you met with from the U.S. Embassy?

A. I don't know

Q. What documents did you present to the U.S. Embassy in order to receive the visa[?]

A. Papers for a visit that's all

Q. How much was the fee at the U.S. Embassy?

A. I[f] you go to the Embassy you pay money, but I forgot, it was last year

When asked whether he had ever traveled to the United States before, the applicant stated that he had come for a vacation from May 20 to June 11, 2000. He further stated that he had taken the train from JFK airport to Virginia and stayed with his uncle, but that he could not recall his uncle's address or how long the train ride was. The applicant also provided the following responses to the official's questions about his visit:

Q. What did you do while you in [sic] Virginia?

A. I went to [sic] sight seeing

Q. What sites [sic] did you see?

A. Fairfax Hospital

Q. Did you visit any other places?

A. Statue of Liberty, Times Square Gardens, White House and the Capital [sic] building

Q. Since you traveled from place to place in New York to visit the site [sic], what were the colors of the city cabs in New York?

A. Some are white and some are black

Following his first sworn statement on September 8, 2011, the applicant was sent to a doctor for an examination intended to verify his age. Later that same day, the applicant gave a second sworn statement. The officer asked, "You stated earlier that the name in the passport is yours, does that still remain true?" The applicant replied, "No." He then revealed his true name and date of birth and stated that his friend, [redacted] gave him the passport because the applicant "told him [he] needed money to go to secondary school because [his] parents could not finance it . . . ." The officer also asked the following questions:

Q. Did you present this Ghana passport [redacted] [sic] containing a U.S. [redacted] [sic] to an inspector on the Immigration primary line?

A. Yes.

Q. Did you present this Ghana passport# [redacted] [sic] containing a U.S. [redacted] [sic] in order to gain entry into the U.S.?

A. Yes.

...

Q. Why did you lie on your previous statement when you swore to tell the truth under oath?

A. I don't know, just pressure that made me lie.

The applicant then stated that his aunt and uncle live in Virginia and that he had previously informed them of his intention to come to the United States using documents that did not belong to him.

The applicant's detailed false statements indicate that he made a deliberate decision to impersonate the true owner of the passport and visa in order to gain entry into the United States. That he perpetuated his false identity and claim through a series of questions demonstrates that he knew that there would be consequences, such as the refusal of admission based on the fact that he did not possess a valid visa, if his true identity were revealed. The record does not establish that the applicant's misrepresentations should be attributed to someone else. His actions indicate that he was sufficiently mature to understand that his statements were false and that there would be immigration-related consequences if it were revealed that the passport and visa did not belong to him. Accordingly, the applicant is subject to section 212(a)(6)(C)(i) of the Act despite the fact that he was a minor at the time of his attempted entry.

The AAO also finds that the applicant's misrepresentations were deliberate and voluntary. Section 212(a)(6)(C)(i) of the Act may be violated by committing fraud or willfully misrepresenting a material fact. *See Mwongera v. INS*, 187 F.3d 323, 330 (3d Cir. 1999); *Matter of Kai Hing Hui*, 15 I&N Dec. 288, 289-90 (BIA 1975). Fraud consists of "false representations

of a material fact made with knowledge of its falsity and with intent to deceive.” See *Matter of G-G-*, 7 I&N Dec. 161, 164 (BIA 1956). In the immigration context, a finding of fraud requires that an individual “know the falsity of his or her statement, intend to deceive the Government official, and succeed in this deception.” *In re Tijam*, 22 I&N Dec. 408, 424-25 (BIA 1998). Willful misrepresentation does not require an intent to deceive, but instead requires only the knowledge that the representation is false. See *Parlak v. Holder*, 57 F.3d 457 (6th Cir. 2009) (citing to *Witter v. INS*, 113 F.3d 549, 554 (5th Cir. 1997); see also *Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995); *In re Tijam*, *supra*. “The element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary.” See *Mwongera*, *supra*.

Although the applicant was a minor at the time he presented the passport and visa in an attempt to gain entry, the AAO finds that he was “old enough to know better and to be held accountable for [his] actions.” *Malik v. Mukasey*, 546 F.3d 890, 892 (7th Cir. 2008). Throughout a complete interview during secondary inspection, the applicant fabricated a detailed story regarding his identity, his process of obtaining a visa, and his alleged past visit to the United States. Notwithstanding his minority, the record establishes that the applicant knew he was presenting fraudulent documentation to enter the United States and that his presentation of this documentation was both voluntary and deliberate. Accordingly, we find that he willfully misrepresented a material fact and is inadmissible to the United States under section 212(a)(6)(C)(i) of the Act.

Additionally, the AAO is not persuaded by counsel’s assertion that the applicant made a timely retraction of his misstatements. “The doctrine of timely recantation is of long standing [sic] and ameliorates what would otherwise be an unduly harsh result for some individuals, who, despite a momentary lapse, simply have humanity’s usual failings, but are being truthful for all practical purposes.” *Sandoval v. Holder*, 641 F.3d 982, 988 (8th Cir. 2011) (quoting *Valadez-Munoz v. Holder*, 623 F.3d 1304, 1309 (9th Cir. 2010)). The Board has recognized the virtue of applying that principle when an alien “voluntarily and prior to any exposure of the attempted fraud corrected his testimony that he was an alien lawfully residing in the United States.” *Matter of M--*, 9 I&N Dec. 118, 119 (BIA 1960); see also *Matter of R-R-*, 3 I&N Dec. 823, 827 (BIA 1949). In addition, the Board has found that “recantation must be voluntary and without delay.” *Matter of Namio*, 14 I&N Dec. 412, 414 (BIA 1973). When a retraction “was not made until it appeared that the disclosure of the falsity of the statements was imminent [, it] is evident that the recantation was neither voluntary nor timely.” *Id.*

In this case, the applicant presented a photo-switched passport and visa to an immigration inspector in an attempt to enter the United States as [REDACTED]. After this material misrepresentation at primary inspection, he perpetuated his misrepresentations during an interview in secondary inspection. As discussed above, he provided significant detail regarding his alleged in-person application for the visa and his previous visit to the United States. Only after being sent to a doctor for an examination intended to determine his true age did the applicant give a second sworn statement in which he admitted that his previous statements had been false. Therefore, the applicant did not retract his misstatements voluntarily and without delay “prior to any exposure of the attempted fraud,” *Matter of M--* at 119, but instead did so only after making a misrepresentation to the first officer, being referred to secondary inspection

and to a doctor for confirmation of his age, and signing a false sworn statement. He only revealed the truth after it became apparent that officials did not believe his story, when he was evaluated by a doctor in an attempt to confirm his age. As a result, his retraction cannot be considered timely.

Finally, whether the applicant actually obtained a benefit through a misrepresentation is irrelevant to an inadmissibility determination under section 212(a)(6)(c) of the Act. Citing *Kungys v. U.S.*, 485 U.S. 759, 767 (1988), counsel avers that an applicant “must have received the benefit” sought to qualify as a willful misrepresentation of a material fact. The Court in *Kungys* addressed 8 U.S.C. § 1451, which provides for revocation of a naturalization certificate obtained illegally or through concealment or willful misrepresentation of a material fact. *Kungys v. U.S.*, 485 U.S. at 767. The applicant’s inadmissibility, on the other hand, is based on section 212(a)(6)(C) of the Act, which specifically provides for the inadmissibility of any individual who “seeks to procure (or has sought to procure or has procured)” a benefit. Accordingly, counsel’s assertion that the applicant must have obtained a benefit in order to be found inadmissible is contradicted by the clear language of the statute.

Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having attempted to procure admission to the United States through fraud or misrepresentation. He 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.

Under section 212(i) of the Act, 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. Hardship to the applicant or to his U.S. citizen child can only be considered insofar as it causes extreme hardship to his qualifying spouse. 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.

The qualifying spouse claims that she and her one-year-old daughter, [REDACTED] rely heavily on the applicant and that they would experience extreme hardship if separated from him. She states that she and the applicant support each other in a close, loving marriage and that living apart would strain their relationship. She indicates that they have established a stable two-parent home for [REDACTED] and that she would be devastated if she had to raise [REDACTED] alone. Furthermore, the qualifying spouse asserts that she and the applicant plan to have more children but would be unable to do so if separated.

Additionally, the qualifying spouse claims that she and [REDACTED] depend on the applicant for financial support and that her income is insufficient to meet the family's financial obligations on her own. She explains that she works as a nurse and the applicant works two full-time jobs as a security guard, and that only through their combined income are they able to support [REDACTED], pay their mortgage, car payments, and credit card bills, and make payments toward the qualifying spouse's student loans. She believes that she would be unable to support [REDACTED] on her own and that the applicant would be unable to earn sufficient income in Ghana to send money to support his family in the United States. As a result, she fears that she and [REDACTED] would live in poverty.

Also, the qualifying spouse asserts that she and the applicant are able to arrange their work schedules in order to care for [REDACTED] without having to hire a regular babysitter. The qualifying spouse claims that if the applicant is removed, she will have to quit her job or place [REDACTED] in daycare, which she could not afford on her income alone. Additionally, she contends that quitting her job as a registered nurse would be devastating to her because she has worked very hard to establish a career in nursing.

The qualifying spouse also alleges that she would experience extreme hardship if she were to relocate to Ghana with the applicant. Although she is originally from Ghana, she notes that she has lived in the United States since 2002 and that she has significant professional, social, and family ties in this country. She states that moving to Ghana would force her to give up her career as a registered nurse, which is an important part of her identity and for which she has invested significant time and money. She explains that there is a severe shortage of nurses in Ghana, so there would be insufficient experienced nurses to provide her with mentoring and guidance. Additionally, the qualifying spouse states that the healthcare system in Ghana is very poor and that the public has a negative opinion of nurses, so she would "not be able to continue [her] career development in such an undesirable system." She therefore fears that her education and experience in nursing would be rendered useless in Ghana and that she "would not be able to handle this loss emotionally." Similarly, she notes that she is planning to begin a Master's degree program and that she would be unable to do so in Ghana, resulting in significant disappointment for her.

Furthermore, the qualifying spouse asserts that raising [REDACTED] in Ghana would be emotionally devastating for her because she has worked hard to provide a safe and stable environment for [REDACTED] in the United States. She indicates that living in Ghana would be unsafe due to political instability, corruption, high crime rates and poverty, and poor healthcare and educational systems. She also states that [REDACTED] would miss opportunities in Ghana that she would have had in the United States, including attending a private Christian school. Finally, the qualifying

spouse fears that she and the applicant would be unable to earn sufficient income in Ghana to support themselves and [REDACTED] and to pay their outstanding debts in the United States.

In his statement on appeal, the applicant echoes the qualifying spouse's concerns. He states that his qualifying spouse and [REDACTED] would be unable to accompany him to Ghana because of the unsafe living conditions, poor economy, and inferior education and healthcare systems. He believes that the qualifying spouse would be forced to end her career in nursing and that she would be unable to earn sufficient income to help support their family. Additionally, he notes that abandoning her career and raising [REDACTED] in Ghana would be emotionally devastating for the qualifying spouse.

He also states that the qualifying spouse would suffer extreme hardship if she were to remain in the United States without him because she would struggle to raise [REDACTED] as a single parent. He states that the qualifying spouse relies on him for emotional and financial support and that losing such support would be extremely difficult for her.

The applicant's sister confirms that the applicant and the qualifying spouse depend heavily on one another for emotional and financial support. She writes that the qualifying spouse would be unable to meet her financial obligations and care for [REDACTED] in the applicant's absence. Additionally, she states that the qualifying spouse would not be able to relocate to Ghana because "[s]he has invested so much in her education and her and her family's future here in the United States." *See Letter from [REDACTED]*, dated August 15, 2010. The applicant's sister contends that the qualifying spouse would be unable to continue her nursing career or earn a comparable salary in Ghana. She also states that [REDACTED] would receive an inferior education and poor healthcare in Ghana, resulting in suffering for the applicant and the qualifying spouse due to their commitment to providing a safe and healthy upbringing for [REDACTED]. *See id.*

In a letter, the applicant's friend, [REDACTED] indicates that the applicant and the qualifying spouse have a very close relationship. He predicts that the qualifying spouse "would suffer tremendously, both financially and emotionally" if the applicant were to return to Ghana. *See Letter from [REDACTED]* dated August 11, 2010. Mr. [REDACTED] notes that the applicant contributes significantly to the financial wellbeing of his family as well as the daily functioning of the household. He asserts that the qualifying spouse "will not be able to support her daughter and her own needs" in the applicant's absence. *Id.*

Another friend, [REDACTED] also writes that the applicant and the qualifying spouse have a close, loving marriage and that they depend on one another. Ms. [REDACTED] indicates that they would be unable to raise [REDACTED] in Ghana because economic and safety conditions as well as educational opportunities are poor in that country. Ms. [REDACTED] also states that the qualifying spouse would be unable to earn sufficient income as a nurse in Ghana and would suffer emotionally if she had to give up her career as a nurse in the United States. Furthermore, Ms. [REDACTED] contends that the qualifying spouse would be unable to support herself and [REDACTED] in the United States without the applicant's contributions. *See Letter from [REDACTED]*, dated August 16, 2010.

also a friend of the applicant's, states that the applicant's "family will suffer tremendously" if the applicant is not permitted to reside in the United States. *See Letter from* dated August 22, 2010. Mr. believes that the qualifying spouse will be unable to afford her basic expenses on her income alone. He notes that the qualifying spouse has no close family living nearby who could provide her with financial assistance. He also states that the qualifying spouse would not be able to afford to visit the applicant in Ghana or to send there to visit her father. Additionally, Mr. indicates that the applicant and the qualifying spouse would "go crazy" due to the loneliness of separation. *Id.*

In a psychological evaluation, Dr. writes that the qualifying spouse "is experiencing clinically significant levels of distress at this time, with the possibility of an emerging anxiety disorder." *See* LPC, dated September 27, 2010. Furthermore, he states that the qualifying spouse "would suffer unusual hardship should [the applicant] be unable to remain in the United States with her and their daughter *Id.* Dr. explains that living in the United States without the applicant would force the qualifying spouse to be "both bread-winner and caregiver," causing her to "experience both greater anxiety and diminished self-esteem." *Id.* Additionally, if she were to quit her job to care for in the United States or to relocate to Ghana, being unable to pursue her career as a nurse "is certain to cause her severe psychological hardship" because she "is very identified with her profession . . . ." *Id.* Dr. also notes that if the qualifying spouse were to relocate to Ghana, "she would be in a constant state of extreme anxiety about her daughter[s] well-being; she would always have to [be] worrying about 's health, physical safety, lack of education and limited opportunities for a career." *Id.* According to Dr. "This constant anxiety is certain to have a debilitating effect upon her physically as well as mentally." *Id.* Furthermore, Dr. notes that most people "suffer psychologically whenever they are uprooted from [their] community." *Id.* In conclusion, Dr. finds that the qualifying spouse's fears are "grounded in reality" and that she "is experiencing elevated levels of emotional distress, which are certain to become more severe if [the applicant] is deported and which could rise to the level of becoming disabling[.]" thereby causing severe hardship for the qualifying spouse. *Id.*

The AAO finds that the applicant has failed to meet his burden of showing that his qualifying spouse would suffer extreme hardship if separated from the applicant. While the applicant and his qualifying spouse have a close relationship and are raising their young daughter together, the evidence, considered in the aggregate, fails to establish that the relevant factors would constitute hardship beyond that which would normally result from the long-term absence of a close family member.

First, the evidence of record does not support the qualifying spouse's claim that she and would live in poverty without the financial contributions of the applicant. Although she alleges that her income fluctuates significantly because she works irregular hours, the pay stubs she submitted from 2008, 2009, and 2010 all list her "Employee Status" as "Active Full-time 72-80 hrs." *See Pay Stubs,* dated January 29, 2010, January 15, 2010, December 31, 2009, and December 5, 2008. Additionally, a letter from her employer states that she has

been employed by [REDACTED] since October 4, 2004 and that “her current base rate of pay is \$27.50 per hour.” See *Letter from* [REDACTED] dated January 27, 2010. Furthermore, the qualifying spouse’s Form W-2 for 2009 shows that her gross income for that year was \$57,763.40. Although her Form W-2 for 2008 indicates that she earned \$25,216.35 that year, the most recent documentation she submitted reflects her current income. The record indicates that the qualifying spouse has a student loan debt of \$13,932.74, which translates to her monthly payment of \$50.78. Therefore, the evidence does not support a finding that the qualifying spouse would be unable to support herself and [REDACTED] on her income alone.

The record also lacks corroborative evidence to support the qualifying spouse’s claim that she would be forced to abandon her career as a nurse in order to raise [REDACTED] on her own. As discussed above, the evidence does not show that she would suffer financial hardship without the applicant’s contributions or that she would be forced to seek a higher income elsewhere. Furthermore, the record contains no evidence relating to the cost of daycare or the impact of such cost on her continued employment as a nurse.

Finally, the evidence does not establish that the qualifying spouse would suffer extreme emotional hardship on separation from the applicant. While Dr. [REDACTED] discusses various sources of anxiety for the qualifying spouse, he has not diagnosed her with depression or any other mental health disorder. Instead, he states that there is “the possibility of an emerging anxiety disorder.” See [REDACTED] *LPC*. Significantly, he also notes that “[t]hese symptoms may simply represent the normal functional anxiety level for this individual . . . .” *Id.* Moreover, he does not recommend continuing therapy, medication, or other treatment; instead, he states, “The client’s status may require further monitoring, and underlying causes should be more closely reviewed.” *Id.* There is no indication that the qualifying spouse has sought additional mental health treatment or that her anxiety has interfered with her ability to work, care for her daughter, participate in her marriage, or fulfill her daily responsibilities. While the record indicates that the qualifying spouse is experiencing some emotional hardship related to the applicant’s inadmissibility, the record does not support a finding that such difficulty exceeds that which might normally result from separation from a close family member.

The AAO also finds that the applicant has failed to demonstrate that his qualifying spouse would suffer extreme hardship if she were to relocate to Ghana with the applicant. Although the qualifying spouse has lived in the United States since 2002, she is originally from Ghana and is familiar with the culture and way of life in that country. There is no evidence in the record that she has close family ties in the United States other than the applicant and her young daughter, [REDACTED]. While the qualifying spouse has invested significant time, effort, and money into beginning her career as a nurse and that her career is important to her, the record does not establish that relocation would force her to abandon her profession. The qualifying spouse asserts that she would not be able to work as a nurse in Ghana because there is a severe shortage of nurses in that country. However, instead of supporting her claim of hardship, the existence of a nursing shortage suggests that she would be able to find work in nursing in Ghana. While the qualifying spouse is concerned about the lack of mentors in the nursing field, the poor public perception of nurses, and a generally poor healthcare system, her concerns about inferior

working conditions cannot support a finding of extreme hardship even when considered in conjunction with her other concerns.

Similarly, the qualifying spouse's concerns about the quality of life in Ghana for herself and her family does not support a finding of extreme hardship. Inferior healthcare, education, and standard of living are all factors commonly faced by families of individuals facing inadmissibility or removal. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 568 (BIA 1999). Additionally, while the applicant has presented general information regarding human rights violations and political instability in Ghana, this information does not establish that the qualifying spouse in particular would be at risk of any harm in that country. The AAO notes that the U.S. Department of State has not advised U.S. citizens against travel to Ghana but instead warns that travelers remain vigilant of political rallies, pickpocketing, and fraud. *U.S. Dept. of State, Country Specific Information: Ghana* (Mar. 28, 2013), available at [http://travel.state.gov/travel/cis\\_pa\\_tw/cis/cis\\_1124.html#](http://travel.state.gov/travel/cis_pa_tw/cis/cis_1124.html#). The generalized economic information in the record is also insufficient to establish that the applicant, an experienced security guard, and the qualifying spouse, a trained nurse, would be unable to find work or to earn sufficient income in Ghana.

Finally, the AAO acknowledges the applicant's claim that hardship to Jayda, who is not a qualifying relative, would create extreme hardship for the qualifying spouse. However, as discussed above, the evidence does not support the claims of hardship. Although an asserted life of poverty for Jayda could potentially constitute extreme hardship for the qualifying spouse, the record does not corroborate the qualifying spouse's claims of such financial difficulty. The record does not demonstrate that "[t]he conditions in Ghana are horrible," such that relocation of [REDACTED] to Ghana would present extreme hardship to the qualifying spouse. *See Sworn Statement of [REDACTED]* par. 3. Moreover, as discussed above, the qualifying spouse's other concerns regarding inferior educational opportunities, healthcare, and a lower standard of living are common results of relocation and would not constitute extreme hardship for [REDACTED] or by extension for the qualifying spouse.

The AAO finds that the applicant has failed to demonstrate that his qualifying spouse would suffer extreme hardship if the waiver application were denied. As the applicant has not established extreme hardship to a qualifying family member, it is unnecessary to analyze whether the applicant may merit 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.