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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

[redacted]

MAY 13 2010

FILE: [redacted] Office: DENVER (SALT LAKE CITY) Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Acting District Director, Denver, Colorado, denied the instant waiver application and denied a subsequent motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nigeria, the wife of a United States citizen, and the beneficiary of an approved Form I-130 petition. The applicant was found to be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act) for having been convicted of a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her husband. The acting district director also found that the applicant had not demonstrated that denial of the waiver application would result in extreme hardship to a qualifying relative as described in section 212(h) of the Act, and denied the waiver application accordingly.

On appeal, counsel reiterated that the applicant's husband would suffer extreme hardship if the applicant is not permitted to remain in the United States. Although counsel did not appear to contest the acting district director's determination of inadmissibility, the AAO will review that determination.

Section 212(a)(2)(A) of the Act states, in pertinent part:

> (i) In general. – Except as provided in clause (ii), any alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of –
>
> > (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . [is inadmissible].
>
> (ii) Exception. – Clause (i)(I) shall not apply to an alien who committed only one crime if-
>
> > (I) the crime was committed when the alien was under 18 years of age . . . . or
> >
> > (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

The applicant was arrested, on April 11, 2001, in Sandy, Utah, and charged with one count of violating Utah Criminal Code section 76-6-405, Theft by Deception, and four counts of violating Utah Criminal Code section 76-6-501, Forgery. On March 13, 2003, the applicant was convicted, pursuant to her pleas of guilty, of the single count of theft by deception and of two counts of

Forgery, all charged as misdemeanors. The remaining Forgery counts were dismissed. On June 5, 2003 the applicant was sentenced to 360 days confinement for all three counts. As to the count of Theft by Deception, all but 100 days confinement was suspended. All of the confinement was suspended as to the two counts of Forgery. The applicant was placed on three years probation. [redacted]

Section 76-6-405 of the Utah Criminal Code, Theft by False Pretenses, as in effect on April 11, 2001, stated,

> (1) A person commits theft if he obtains or exercises control over property of another by deception and with a purpose to deprive him thereof.
>
> (2) Theft by deception does not occur, however, when there is only falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed. "Puffing" means an exaggerated commendation of wares or worth in communications addressed to the public or to a class or group.

Section 76-6-501 of the Utah Criminal Code, as in effect on April 11, 2001, stated,

> (1) A person is guilty of forgery if, with purpose to defraud anyone, or with knowledge that he is facilitating a fraud to be perpetrated by anyone, he:
>
> > (a) alters any writing of another without his authority or utters any such altered writing; or
> >
> > (b) makes, completes, executes, authenticates, issues, transfers, publishes, or utters any writing so that the writing or the making, completion, execution, authentication, issuance, transference, publication, or utterance purports to be the act of another, whether the person is existent or nonexistent; or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when an original did not exist.
>
> (2) As used in this section, 'writing' includes printing, electronic storage or transmission, or any other method of recording valuable information including forms such as:
>
> > (a) checks, tokens, stamps, seals, credit cards, badges, trademarks, money, and any other symbols of value, right, privilege, or identification;
> >
> > (b) a security, revenue stamp, or any other instrument or writing issued by a government or any agency; or
> >
> > (c) a check, an issue of stocks, bonds, or any other instrument or

> writing representing an interest in or claim against property, or a pecuniary interest in or claim against any person or enterprise.
>
> (3) Forgery is a felony of the third degree."

The BIA has determined that theft constitutes a crime involving moral turpitude when it includes the intent to permanently take another person's property. *See Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) ("Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended."). The intent to permanently deprive the victim of his property is an element of the offense of Theft by False Pretenses under section 76-6-405 of the Utah Criminal Code. *State v. Laine*, 618 P.2d 33 (1980 Utah). Thus, the applicant's conviction of Theft by False Pretenses under that section constitutes a crime involving moral turpitude.

Forgery is a crime involving moral turpitude. *Matter of Seda*, 17 I. & N. Dec. 550 (BIA 1980), Georgia; *Animashaun v. INS*, 990 F.2d 234 (5th Cir. 1993), Alabama; *Balogun v. Ashcroft*, 270 F.3d 274 (5th Cir. 2001); *Morales-Carrera v. Ashcroft*, 74 F.3d Appx. 324 (5th Cir. 2003). Thus, the applicant's two convictions of forgery are crimes involving moral turpitude.

The applicant was convicted of more than one crime involving turpitude. Further, the applicant was born on October 10, 1967 and was more than 18 years old when she committed her crimes. Further still, she was sentenced to serve more than six months of confinement. The exceptions to inadmissibility contained in section 212(a)(2)(A)(ii) of the Act do not pertain to this case. The applicant is inadmissible pursuant to Section 212(a)(2)(A). The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

Section 212(h) of the Act provides, in pertinent part, that:

> The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraph (A)(i)(I)
>
> > (1)(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United

States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

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).

A waiver of inadmissibility under section 212(h) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.,* the U.S. citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

Various documents demonstrate that the applicant's husband was appointed to an associate professorship at Brigham Young University, in Provo, Utah, on September 1, 1999. A 2000 Form 1040 U.S. Individual Income Tax Return shows that the applicant's husband, who filed separately from the applicant, earned total income of $59,435 during that year. A 2001 Form W-2 Wage and Tax Statement shows that the university paid the applicant's husband $60,804.14 during that year. A 2002 W-2 form shows that during that year the university paid him $59,925.76, and his tax return shows that he had total income of $61,356 during that year. An employment verification letter shows that as of December 9, 2003, his academic year salary was $74,780.

The record contains various publications, including printouts of web content, news articles and editorials, publications authored by the applicant's husband, a crime and safety report from the Overseas Security Advisory Counsel, a Consular Information Sheet, and Travel Warnings from the U.S. Department of State, that show that Nigeria has various problems, including poor quality health care, poverty, a high crime rate, political instability, extrajudicial killings, and political assassinations. The AAO has considered all of the evidence in the record in reaching today's decision.

The record contains various utility bills and other bills issued to the applicant's husband, including a mortgage loan statement showing that the applicant's husband owns real estate encumbered by a loan in excess of $200,000 and pays almost $2,000 monthly to amortize that amount.

A letter, dated February 16, 2006, from [redacted] states that the applicant's husband also has and is being treated for high cholesterol and high blood pressure, as well as kidney insufficiency and other, unidentified, conditions. That letter states that those conditions place the applicant's husband at a higher risk for "a cardiovascular event or complication" than others in his age group. It also states that "Regular medical care in the United States is necessary to limit such risk and for him to avoid such an outcome," and that "It is likely that such medical care would not be available to him in a developing country."

The record contains letters from the applicant's and applicant's husband's friends. Many of those letters are essentially character references, and contain no evidence pertinent to hardship that would result to the applicant's husband if she is removed from the United States. Those letters will not be further addressed.

The record contains a letter, dated May 25, 2005, from the applicant's husband. In it, he stated that, because he has criticized the Nigerian government for failing to sufficiently promote academic freedom and the civil and political rights of scholars, and because he publicly criticizes Nigerian public policy, he would risk death by returning to Nigeria to live with the applicant. He stated that he would rather abandon his tenured full professorship than live separately from his wife, but that he is unable to return to Nigeria.

The applicant's husband made various statements about the hardship he would suffer if separated from the applicant. He stated, "Because of the distress losing her would cause me, my very livelihood depends on her," and "[b]eing separated from my wife would cause an economic, emotional and cultural hardship for me since I do not know how to function without her." He stated "This action of permanent exile would not only truncate our marriage, it could lead to loss of property and life." Finally, he stated, "

> If I was to be separated from my wife it will cause an enormous and emotional hardship to my life and stay here in the [United States] which could lead to an economic and religious devastating hardship on our relationship. I believe in the institution of marriage and culturally it means a lot to my religion for a wife to be united with the husband for better or for worse."

[Errors in the original.]

The record contains another letter, dated March 1, 2006, from the applicant's husband. In it, he stated that when he returned to Nigeria in 1989 after studying in the United States,

> I found myself in disharmony with the administration of the University of Port Harcourt and the government of Nigeria because of the ideological perspective of my research, my commitment to promoting academic freedom, my agitation against academic moral corruption, and a fight for justice for the poor and people of the Niger Delta. My relentless efforts to ensure academic, and basic inclusion of the Niger Delta people in the reengineering of Nigeria brought censorship, harassment, and undue termination of my university appointment. Vigilante groups, cult members and faceless groups in the university ceaselessly wrote anonymous letters

> threatening my life for fighting to stamp out corruption and academic fraud, and the poverty conditions that existed in the Niger Delta region.

[Errors in the original.]

In that letter, the applicant's husband stated that he remains unable to return to Nigeria because,

> [his] research ideology . . . criticizes government policy and investigates subjects deemed politically sensitive such as corruption, undemocratic governance, and the abuse of human rights, social injustice in education, and poverty and exclusion of the [applicant's husband's tribe] of the Niger Delta.

The applicant's husband stated that he visited Nigeria the previous November to present a paper which was not received well by government operatives, but did not state how that poor reception was manifested. He stated, "I was almost picked up by the State Security Service." He provided no evidence in support of his various assertions. He did not explain how he knew he was almost arrested or what prevented his arrest.

The record contains another letter, dated March 20, 2007, from the applicant's husband. In it, he stated that his only significant family and social ties are in the United States and that conditions in Nigeria are unstable, dangerous and inadequate.

The applicant's husband stated that his stepmother now lives with him and the applicant, and urged that if he moves to Nigeria to live with the applicant this would inflict hardship on her. The record contains a letter, dated February 26, 2006, from the applicant's husband's step-mother, who stated that she has high cholesterol and high blood pressure. The AAO notes, however, that the applicant's husband's step-mother is not a qualifying relative pursuant to section 212(h) of the Act, and hardship to her is not directly relevant to any material issue in this case.

The applicant's husband stated that, for him to live in Nigeria would oblige him to quit his university appointment of approximately $80,000 per year, and estimated that, if he could obtain a university appointment in Nigeria it would pay approximately $3,000 annually.

In support of the assertions pertinent to country conditions in Nigeria, counsel provided a Consular Information Sheet and Travel Warnings issued by the United States Department of State. Counsel provided a crime and safety report from the Overseas Security Advisory Counsel. Counsel also provided news articles and other documents from unofficial sources.

The Consular Information Sheet states that civil unrest and violent crime are regularly present in parts of Nigeria. It also stated that medical care in Nigeria is poor.

The Travel Warnings provided were issued on January 13, 2006, February 17, 2006, and March 8, 2007 and are continuations of previous Travel Warnings. They state that the lack of law and order in Nigeria poses a considerable risk. They warn that violent crime may be perpetrated by ordinary criminals as well as police and military personnel. In those warnings, the Secretary of State advised against travel to Nigeria.

The AAO notes that the Secretary extended the Travel Warning pertinent to Nigeria on July 17, 2009, citing essentially the same concerns.

The report from the Overseas Safety Advisory Counsel addresses concerns similar to those included in the Consular Information Sheet and the Travel Warnings, as do the news articles and documents from unofficial sources.

The AAO finds that, given the applicant's husband's medical conditions, the demonstrated poor quality of medical care available in Nigeria, the asserted persecution the applicant's husband faces in Nigeria, the manifestly unsafe conditions in Nigeria, the applicant's husband's asserted lack of family ties in Nigeria, and the fact that going to Nigeria would require the applicant's husband to vacate his professorship, that, if the applicant were removed to Nigeria, and the applicant's husband accompanied her to live there, the applicant's husband would suffer extreme hardship.

In order to demonstrate that failure to approve the waiver application would cause extreme hardship to the applicant's husband, however, the applicant must demonstrate that, if she returns to Nigeria, her husband would suffer extreme hardship whether or not he accompanied her there to live. The remaining scenario to consider is that of the applicant returning to Nigeria and her husband remaining in the United States.

Although counsel has asserted that the applicant has worked during her stay in the United States, the applicant's husband has not demonstrated, nor even alleged, that he is dependent upon his wife's income. There is no indication that, if the applicant departs the United States and her husband remains, that any financial hardship he might suffer would, even when considered together with the other hardship factors in this case, rise to the level of extreme hardship.

The remaining hardship factor to be considered is the emotional or psychological hardship the applicant's husband would suffer if he were to live in the United States without his wife. The applicant's husband made various assertions indicating that he loves his wife and does not want to be separated from her.

The AAO accepts, as a matter of course, that separation from the applicant would cause some degree of hardship to the applicant's husband. In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than the normal, expected hardship involved in such cases.

The record contains no evidence from psychologists, psychiatrists, or other mental health professionals to demonstrate that the relationship between the applicant and her husband is so profound, or that he is so emotionally fragile, that her absence would cause him much greater hardship than would be expected in a typical case of removal of a spouse from the United States. The record does not demonstrate, therefore, that if the applicant is removed from the United States and her husband remains, that the emotional hardship that will thus be inflicted upon him, when considered with the other hardship factors in this case, would rise to the level of extreme hardship.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's husband faces extreme hardship if the applicant is removed to Nigeria and her husband remains in the United States. Rather, the record suggests that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States.

The record demonstrates that the applicant has a loving and devoted husband and good friends who are concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen husband as required under INA § 212(h), 8 U.S.C. § 1186(h) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not address whether the applicant merits waiver as a matter of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.