U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
*Office of Administrative Appeals*
20 Massachusetts Ave. NW MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 0 1 2013 OFFICE: LONDON, ENGLAND File:

IN RE: Applicant:

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

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 motion 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the United Kingdom who was found to be inadmissible to the United States under section 212(a)(2)(A)(i) of the Immigration and Nationality Act (the Act), U.S.C. § 1182(a)(2)(A)(i), for having been convicted of a crime involving moral turpitude, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a visa, other documentation, or admission into the United States or other benefit provided under the Act by willful misrepresentation. The applicant seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. §§ 1182(h) and 1182(i), in order to reside in the United States with his U.S. citizen mother.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the District Director,* dated August 15, 2011.

On appeal, the applicant contests inadmissibility under section 212(a)(6)(C)(i) of the Act and counsel asserts that the applicant's mother will suffer extreme hardship if a waiver is not granted. *See Applicant's Letter*, dated September 11, 2011 and *Form I-290B, Notice of Appeal or Motion*, received September 16, 2011.

The record contains, but is not limited to: Form I-290B and counsel's statement thereon; various immigration applications and petitions; a hardship letter; a social worker's letter; a physician's letter; the applicant's letter; letters of support and character reference; an attorney's letter; a notary public's letter; documents related to the applicant's misrepresentations; and documents related to the applicant's criminal record. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (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 record shows that the applicant was admitted to the United States under the Visa Waiver Program (VWP) on five occasions - in July 2003, August 2004, October 2006, May 2007 and October 2007, after having falsely indicated on five Forms I-94W, Nonimmigrant Visa Waiver Arrival/Departure Record, that he has never been arrested or convicted for an offense or crime involving moral turpitude. The applicant asserts that he "marked I had no criminal record" because the United Kingdom's Rehabilitation of Offenders Act of 1974 "enables criminal convictions to be ignored after a prescribed rehabilitation period." He contends that as his United Kingdom police record indicates "no live convictions," he "took great pride stating on my US Immigration landing card that I had no criminal record." The applicant maintains that while he

can appreciate why United States immigration authorities have viewed his Form I-94W answers as inaccurate he provided them in the context of United Kingdom laws, never deliberately misrepresenting his criminal history to the United States government. The AAO finds the applicant's assertions unpersuasive. The relevant inquiry on Form I-94W, at page 2, question B asks not whether the visa waiver applicant has a criminal record but whether he or she has "ever been arrested or convicted for an offense or crime involving moral turpitude..." Thus it is irrelevant whether any convictions were ultimately expunged, be it in the United States, the United Kingdom or elsewhere, as the inquiry specifically and clearly asks whether the individual has ever been arrested or convicted of a crime involving moral turpitude. The applicant has failed to demonstrate that he did not have the requisite intent to conceal his convictions in order to enter the United States under the Visa Waiver Program. The AAO, therefore, finds that the applicant is inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), U.S.C. § 1182(a)(6)(C)(i).

Concerning the applicant's criminal convictions, section 212(a)(2)(A) of the Act states, in pertinent parts:

> (i) [A]ny 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, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, 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 Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

> [M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....
>
> In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required *mens rea* may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a "realistic probability, not a theoretical possibility," that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007). A realistic probability exists where, at the time of the proceeding, an "actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien's own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude." *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, "the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude." 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the "record of conviction" to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this "does not mean that the parties would be free to present any and all evidence bearing on an alien's conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself." *Id.* at 703.

The record shows that the applicant was convicted in 1985, when he was 19-years-old, for two counts of Burglary and Theft of a Dwelling in violation of section 9 of the United Kingdom's

Theft Act of 1968. He was sentenced to two orders of 120 hours of community service. The applicant was subsequently convicted on December 13, 1985 for Breach of Community Service Order, for which he was sentenced to two orders of 80 hours of community service. The applicant was convicted on August 19, 1986 for Failing to Comply with the Requirements of a Community Service Order, for which he was sentenced to three months imprisonment, fined £100, and ordered to complete the community service order. At the time of the applicant's convictions, the relevant section of law provided in pertinent part:

> (1) A person is guilty of burglary if—
>
> (a) he enters any building or part of a building as a trespasser and with intent to commit any such offence as is mentioned in subsection (2) below; or
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> (b) having entered any building or part of a building as a trespasser he steals or attempts to steal anything in the building or that part of it or inflicts or attempts to inflict on any person therein any grievous bodily harm.
>
> (2) The offences referred to in subsection (1)(a) above are offences of stealing anything in the building or part of a building in question, of inflicting on any person therein any grievous bodily harm ... therein, and of doing unlawful damage to the building or anything therein.
>
> (3) A person guilty of burglary shall on conviction on indictment be liable to imprisonment for a term not exceeding—
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> (a) where the offence was committed in respect of a building or part of a building which is a dwelling, fourteen years;
>
> (b) in any other case, ten years.

The Board of Immigration Appeals (BIA) has maintained that the determinative factor in assessing whether burglary involves moral turpitude is whether the crime intended to be committed at the time of entry or prior to the breaking out involves moral turpitude. *Matter of M-*, 2 I&N Dec. 721, 723 (BIA 1946). For example, the BIA has held that burglary with intent to commit theft is a crime involving moral turpitude. *See Matter of Frentescu*, 18 I&N Dec. 244 (BIA 1982). As a specific statutory element of the crime for which the applicant was convicted is having entered a dwelling with the intent of stealing, the applicant's conviction is for a crime involving moral turpitude rendering him inadmissible under section 212(a)(2)(A)(i)(I) of the Act.[1] As stated above the applicant is also inadmissible under 212(a)(6)(C)(i) of the Act.

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

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[1] The AAO notes that as the applicant has been found inadmissible under section 212(a)(2)(A)(i)(I) of the Act for his burglary conviction and this conviction does not qualify for an exception, we will not discuss whether his other convictions involved crimes involving moral turpitude.

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [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 Attorney General [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.

A waiver of inadmissibility under section 212(i) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. In the present case, the applicant's mother is the only qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (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 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.

The record reflects that the applicant's mother is a 65-year-old native of the United Kingdom and citizen of the United States. She states that the applicant is her firstborn child, her only son, and while she has two daughters residing in the United States she is not close to them but enjoys an especially close bond to her son. The applicant's mother explains that though she is a successful, published criminal justice professor with a happy marriage, her husband is several years older than her, men statistically die earlier than women and thus one day she will need the applicant to become her primary caregiver as she has little financial provision for her old age and no long-term insurance. The record contains no financial documentation of any kind demonstrating the income or assets of the applicant or his mother, addressing whether the applicant's mother's husband has made financial provision for her in the event he dies before her, showing that she will be unable to support herself in that event, or any other documentary evidence establishing that the applicant's mother would suffer any economic hardship for which the applicant would be her only source of financial support and requiring his residence in the United States. Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The applicant's mother indicates that she relies heavily on the applicant for emotional support and is currently on medication to help her deal with the stress of his immigration situation. She writes that she cannot sleep and worries constantly that if she suffers from nervous exhaustion she could

possibly lose the ability to work and earn a livelihood and she likewise worries that she may become dependent on pills to help her cope with anxiety attacks. The applicant's mother maintains that she no longer sees enjoyment in life, feels she has nothing to look forward to in the applicant's absence, and has lost the enthusiasm with which she used to teach her classes. On appeal, writes that the applicant's mother described symptoms of depression and anxiety, met the criteria for depression, and reported to her that she has been having panic attacks in recent months. recommends that the applicant's mother seek a medical evaluation or professional counseling as her symptoms and hopelessness will likely escalate if the applicant remains in England. notes that she believes the applicant's mother is "experiencing hardship" of an emotional, professional, social and marital nature. While the AAO acknowledges professional opinion as a social worker, it is noted that her letter is based on self-reporting by the applicant's mother following a single examination with no indication or documentary evidence demonstrating that the recommended counseling has commenced. In a letter written more than one year earlier, states that he "can report" that the applicant's mother's employment and work in research has been impacted negatively to a significant degree by the applicant's absence and the possibility that he will not be admitted to the United States. No corroborating documentary has been submitted. indicates that he would "classify the situation as creating a significant medical disability" but does not describe the nature of said disability or submit corroborating documentary evidence to show that the applicant's mother is disabled. asserts that he has attempted "through pharmacologic and non-pharmacologic therapies" to manage the applicant's mother's anxiety with depression disorder including panic attacks but that her symptoms have tended to worsen rather than improve. He does not describe the therapies to which he refers and no corroborating documentation has been submitted for the record. While the AAO acknowledges professional opinion and recognizes that the applicant's mother shares a close bond with the applicant and has suffered emotional and physical challenges in his absence, the evidence in the record does not demonstrate that the challenges are beyond those ordinarily associated with the inadmissibility of a loved one. Similarly, while the applicant's mother expresses concern that as she gets older and frail she will no longer be able to make the long and arduous journey from Utah to England to visit the applicant, this is a common challenge of inadmissibility.

The AAO acknowledges that separation from the applicant has caused various difficulties for the applicant's mother. However, it finds the evidence in the record insufficient to demonstrate that the challenges encountered by the qualifying relative, when considered cumulatively, meet the extreme hardship standard.

Neither counsel nor the applicant's mother have directly addressed the possibility of the applicant's mother relocating to the United Kingdom to be with the applicant. however, relays that the applicant's mother is "unable to live in England due to her marriage, financial situation, employment and commitments to family here." No further details or corroborating documentary evidence have been provided. Considered in the aggregate, the AAO finds the evidence insufficient to demonstrate that the applicant's U.S. citizen mother would suffer extreme hardship were she to relocate to the United Kingdom to be with the applicant.

The applicant has, therefore, failed to demonstrate that the challenges his mother faces are unusual or beyond the common results of removal or inadmissibility to the level of extreme hardship. Accordingly, the AAO finds that the applicant has failed to demonstrate extreme hardship to a qualifying relative. As the applicant has not established extreme hardship to a qualifying family member no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

As the applicant has not shown that he is eligible for a waiver under section 212(i) of the Act, the Form I-601 application may not be approved, and no purpose would be served in assessing whether he is eligible for a waiver under section 212(h) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(i) and 212(h) 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.