



U.S. Citizenship
and Immigration
Services

tlr

FILE: [REDACTED] Office: LONDON, UNITED KINGDOM Date: DEC 03 2009

IN RE: [REDACTED]

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

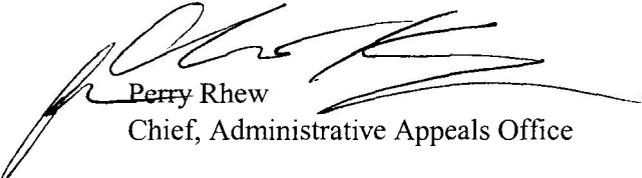
ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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 waiver application was denied by the Field Office Director, London. 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 42-year-old native and citizen of the United Kingdom who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1182(a)(6)(C)(i), as an alien who has procured admission into the United States through fraud or misrepresentation, and pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien convicted of crimes involving moral turpitude. The applicant is married to a U.S. citizen, and he seeks waivers of inadmissibility under sections 212(i) and 212(h) of the Act, 8 U.S.C. §§ 1182(i), 1182(h) in order to reside with his wife and children in the United States.

The Field Office Director found the applicant ineligible for a waiver under section 212(h)(1)(A) of the Act, 8 U.S.C. § 1182(h)(1)(A), because he failed to establish rehabilitation. *See Notice of Denial of Application for Waiver*, dated Apr. 16, 2009. The Field Office Director also determined that the applicant was ineligible for a waiver under sections 212(h)(1)(B) and 212(i) of the Act, 8 U.S.C. §§ 1182(h)(1)(B), 1182(i), because he failed to establish extreme hardship to his spouse. *Id.* The applicant filed a motion to reopen on May 14, 2009, asserting additional hardships caused by the denial of a waiver. *See Motion to Reopen*. The Field Office Director requested additional evidence in support of the motion to reopen on May 27, 2009. *See Request for Evidence*. In response to the request for evidence, the applicant submitted additional documentation and argument regarding the custody arrangements of the applicant's stepdaughters. *See Response to Request for Evidence*, dated June 9, 2009. The Field Office Director determined that the evidence submitted in support of the motion did not establish extreme hardship to the applicant's spouse, and denied the applicant's motion to reopen. *See Decision of the Field Office Director*, dated June 16, 2009.

On appeal, the applicant contends that U.S. Citizenship and Immigration Services (USCIS) erred in denying the application. *See Letter from [REDACTED] in Support of Appeal*. Specifically, the applicant contends that he is not inadmissible under section 212(a)(6)(C)(i) of the Act for fraud or misrepresentation. *Id.* Additionally, the applicant claims that he has provided sufficient evidence of rehabilitation to qualify for a waiver under section 212(h)(1)(A) of the Act. *Id.* Additionally, the applicant contends that he has shown that the denial of a waiver imposes extreme hardship on his spouse and family. *Id.*

The record contains, *inter alia*, a copy of the couple's marriage certificate, indicating that they were married in the United Kingdom on July 4, 2008; a Consular Report of Birth Abroad, relating to the birth of the couple's son on September 7, 2008; letters from the applicant's wife in support of the waiver application and appeal; the applicant's statement of hardship; documentation related to the custody arrangements of the applicant's stepdaughters; two letters relating the applicant's visits to the United States in 2006 and 2007; financial documents; information relating to the applicant's wife's employment with the U.S. Navy; documentation relating to the applicant's convictions in the United Kingdom; and an article by an immigration attorney entitled, "Crimes Involving Moral

Turpitude, a broad overview.”

The AAO maintains plenary power to review each appeal on a de novo basis. *See* 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”). The entire record was considered in rendering a decision on the appeal.

The record reflects that the applicant was convicted of the following offenses in the United Kingdom:

1. On or around June 2, 1986, the Wellingborough Magistrates’ Court convicted the applicant of criminal damage and theft from vehicle. The applicant was fined in the amount of £125.00 for both offenses, and ordered to pay compensation in the amount of £35.00.
2. On or around November 17, 1986, the Wellingborough Magistrates’ Court convicted the applicant of theft from dwelling and attempt/obtaining property by deception. The applicant was fined in the amount of £80.00 for both offenses, and ordered to pay costs in the amount of £19.00.
3. On or around December 16, 1988, the Northampton Crown Court convicted the applicant of making a threat to kill and unlawful wounding. The applicant was sentenced to two years of imprisonment for each offense, served concurrently.
4. On or around November 22, 1991, the Corby Magistrates’ Court convicted the applicant of making a false statement or representation in order to obtain benefit or payment. The applicant was fined in the amount of £50.00, and ordered to pay compensation in the amount of £198.23.

See Police Certificate for Immigration Purposes, issued October 6, 2008; *Certificate of Conviction*, dated Sept. 26, 2008.

The record also shows that the applicant visited the United States in 2006, and 2007, under the Visa Wavier Program. *See Form I-94W Arrival Records* (dated Jan. 26, 2006, and Dec. 15, 2007). On both occasions, the applicant indicated on his Form I-94W Arrival Record that the question regarding criminal arrests or convictions did not apply to him.¹ *Id.*

The applicant contends that he is not inadmissible under section 212(a)(6)(C)(i) of the Act as an alien who has procured admission into the United States through fraud or misrepresentation because the misrepresentations on the Form I-94W Arrival Records were not willful. *See Letter on Appeal.*

¹ Question B on Form I-94W asks:

Have you ever been arrested or convicted for an offense or crime involving moral turpitude or a violation related to a controlled substance; or been arrested or convicted for two or more offenses for which the aggregate sentence to confinement was five years or more; or been a controlled substance trafficker; or are you seeking entry to engage in criminal or immoral activities?

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

Misrepresentation

(i) In general

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this chapter is inadmissible.

In order to find a misrepresentation “willful,” it must be determined that the applicant deliberately and voluntarily misrepresented material facts, and that he or she was aware of the falsity of the representation. *See Witter v. INS*, 113 F.3d 549, 554 (5th Cir. 1997) (“The element of willfulness is satisfied by a finding that the misrepresentation was deliberate and voluntary.”). “Proof of an intent to deceive is not required; rather, knowledge of the falsity of the representation is sufficient.” *Id.*; *see also Forbes v. INS*, 48 F.3d 439, 442 (9th Cir. 1995) (same).

Here, the applicant contends that his erroneous representations on the Form I-94W were accidental and the result of misunderstanding. *See Letter on Appeal; Applicant’s Hardship Statement*. Specifically, the applicant claims that he did not understand the definition and scope of the phrase “crime involving moral turpitude.” The applicant’s former wife, who traveled with him to the United States in 2006, stated that the applicant “truly did not believe that his past legal problems rose to the level of the crimes listed on the form, such as controlled substances crimes and/or trafficking. He marked that question as a no in an honest belief that the facts he represented were truthful.” *Letter from [REDACTED]*, dated June 29, 2009; *see also Letter from [REDACTED]* dated July 6, 2009 (stating that the applicant’s “error was an honest one; he simply didn’t fully understand the scope of the term and in good faith did not believe it applied to him”). Additionally, the applicant’s contention that “moral turpitude” is a complex and unclear area of the law has merit. *See Article, supra* (characterizing the area as “a quagmire”); *see also Matter of Silva-Trevino*, 24 I&N Dec. 687, 688 (A.G. 2008) (noting that “[t]he Board of Immigration Appeals and the Federal courts have long struggled in administering and applying the Act’s moral turpitude provisions, and there now exists a patchwork of different approaches across the nation”). Accordingly, the applicant has met his burden of showing by a preponderance of the evidence that his misrepresentations were not made deliberately and with knowledge of their falsity. *See Witter*, 113 F.3d at 554. The AAO therefore determines that the applicant is not inadmissible for having procured admission into the United States by willful misrepresentation. *See* section 212(a)(6)(C) of the Act; *cf. Forbes*, 48 F.3d at 442 (holding that the alien’s failure to indicate arrest in response to unambiguous question on visa application was a willful misrepresentation because the applicant was aware that the statement was false when made).

The applicant is inadmissible, however, under section 212(a)(2)(A) of the Act, which provides in

pertinent part:

(2) Criminal and Related Grounds

(A) Conviction of Certain Crimes

(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.

The Board of Immigration Appeals (Board) has “observed that moral 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.” *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992). In order to determine whether a conviction involves moral turpitude, the decision-maker must “look first to statute of conviction rather than to the specific facts of the alien’s crime.” *Matter of Silva-Trevino*, 24 I&N Dec. 687, 688 (A.G. 2008). Theft offenses, crimes of assault and battery, and crimes involving fraud have been held to involve moral turpitude, depending on the specific statutory language and, where necessary, the evidence in the record of conviction. *See, e.g., Matter of Jurado-Delgado*, 24 I&N Dec. 29, 33-34 (BIA 2007) (theft); *Matter of Solon*, 24 I&N Dec. 239, 245 (BIA 2007) (assault); *Jordan v. DeGeorge*, 341 U.S. 223, 227-32 (1951) (fraud).

The applicant suffered convictions in the United Kingdom for, among other things, theft, unlawful wounding, and making a false statement to obtain a benefit. *See Police Certificate, supra*. The applicant bears the burden of establishing that his convictions did not involve moral turpitude, and consequently do not render him inadmissible. *Matter of Silva-Trevino*, 24 I&N Dec. at 703 n.4. Here, the applicant concedes that his convictions involved moral turpitude. *See Letter on Appeal; Letter from [REDACTED]* Accordingly, the applicant has not met his burden of showing that his convictions do not render him inadmissible under section 212(a)(2)(A) of the Act, and the AAO will consider whether the applicant qualifies for a waiver of inadmissibility under section 212(h) of the Act.

A discretionary waiver of the crime involving moral turpitude ground of inadmissibility is available under section 212(h) of the Act if:

- (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that--

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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 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; . . .

Section 212(h) of the Act.

The record supports the applicant's contention that he has met the rehabilitation requirements for a waiver under section 212(h)(1)(A) of the Act. First, the applicant's most recent conviction occurred in 1991, more than 15 years ago. Second, the record supports a finding of rehabilitation given his lack of criminal activity for the past 18 years, his volunteer activities in the United Kingdom, *see Letter from [REDACTED]*, his work history, *see Form G-325A, Biographic Information*, and his role as primary caretaker for the couple's son and two daughters, *see Statement of [REDACTED]*. Finally, the record contains no evidence that the applicant's admission to the United States would be contrary to U.S. national welfare, safety, or security. Given the finding of rehabilitation and the lack of further violent criminal behavior, the AAO concludes that the applicant meets all of the requirements for a waiver under section 212(h)(1)(A) of the Act.

Once eligibility for a waiver is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996) (en banc). A favorable exercise of discretion is limited in the case of an applicant who has been convicted of a violent or dangerous crime. Specifically, 8 C.F.R. § 212.7(d) states:

The Attorney General, in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the

² As noted above, the AAO has determined that the record does not support the Field Office Director's determination that the applicant is inadmissible for misrepresentation related to his recent visits to the United States.

Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The applicant's convictions for making a threat to kill and unlawful wounding qualify as violent or dangerous crimes. *See, e.g., Samuels v. Chertoff*, 550 F.3d 252 (2d Cir. 2008) (holding that 8 C.F.R. § 212.7(d) was applicable to individual convicted of attempted first degree robbery). Accordingly, the applicant must show that "extraordinary circumstances" warrant approval of the waiver. 8 C.F.R. § 212.7(d). Extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the applicant's admission would result in exceptional and extremely unusual hardship. *Id.* Finding no evidence of foreign policy, national security, or other extraordinary equities, the AAO will consider whether the applicant has "clearly demonstrate[d] that the denial of . . . admission as an immigrant would result in exceptional and extremely unusual hardship" to a qualifying relative.³ *Id.*

In discussing the lower "extreme hardship" standard, the Board has stated that the definition "is not . . . fixed and inflexible;" rather the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (en banc). Relevant factors include: 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 565-66. Additionally, extreme hardship to the qualifying relative must be established in the event that he or she remains in the United States, and in the event that he or she accompanies the applicant to the home country. *See id.* at 565-68 (considering the hardships of family separation and relocation). In order to show "exceptional and extremely unusual hardship," the applicant must show more than "extreme hardship." *See Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001) (en banc) (holding in cancellation of removal case that the "standard requires a showing of hardship beyond that which has historically been required in suspension of deportation cases involving the 'extreme hardship' standard"). The hardship "must be substantially beyond the ordinary hardship that would be

³ The Field Office Director's decision did not reach the applicability of the heightened hardship standard in section 212.7(d) of the regulations because it was determined that the applicant was not eligible for a section 212(h) waiver. Because the applicant had every incentive to offer all evidence relevant to hardship, a determination regarding exceptional and extremely unusual hardship may be made on the current record. *See, e.g., Samuels v. Chertoff*, 550 F.3d at 261-62.

expected when a close family member leaves this country,” and is “limited to truly exceptional situations.” *Id.* (internal quotation marks omitted). However, the applicant need not show that hardship would be unconscionable. *Id.* at 60.

The applicant’s spouse asserts that she and her children are suffering multiple hardships based on the denial of the waiver, and that these hardships would arise based on family separation or relocation to the United Kingdom. The record reflects that [REDACTED] has been employed by the U.S. Navy for over 18 years, and that she currently works as an Information Professional Officer. *Letter from [REDACTED] in Support of Motion to Reopen.* [REDACTED] has two children from a previous marriage. *See Divorce Decree for [REDACTED] and [REDACTED]* The applicant and [REDACTED] met in September, 2007, while she was stationed in the United Kingdom. *See Letter from [REDACTED] dated Sept. 29, 2008.* The couple married on July 4, 2008, *see Marriage Certificate*, and they have a 1-year-old son, *see Consular Report of Birth Abroad*. Because of a change in duty station, the applicant’s wife returned to the United States with her children in or around December, 2008. *See Hardship Statement of [REDACTED]* When they lived together in the United Kingdom, the applicant served as the primary caretaker for the three children, and did not work outside the home. *See id.*; *see also Form G-325A, Biographic Information.*

Regarding family separation, the applicant’s wife states that the denial of the waiver has caused financial, emotional, professional, and medical hardships. Because she now resides in the United States without the applicant, [REDACTED] states that she must pay \$1,200.00 per month in child care, which causes her to “struggle to make payments and bills each month.” *Letter from [REDACTED] in Support of Motion to Reopen; see also Financial Documents; Projected Budget* (noting [REDACTED] military and rental income of \$105,600 per year, and secured and unsecured debt in the amount of \$253,300). [REDACTED] also notes the extreme hardship of paying for two households in two different countries. *Hardship Statement of [REDACTED]* In support of the emotional hardship claim, [REDACTED] notes the stress and difficulties of being separated from the applicant and raising three children on her own while working full time. *Letter from [REDACTED] in Support of Motion to Reopen.* Further, [REDACTED] fears that the applicant’s prolonged absence from her son’s life and the inability to maintain a traditional nuclear family “will have long-reaching consequences” for her son’s development. *Id.* Additionally, [REDACTED] states that the applicant has been a father figure to her two daughters. *Hardship Statement of [REDACTED]* In support of the professional hardship claim, [REDACTED] states that the denial of the waiver has eliminated the family care plan she established with the applicant, which is required for her military duty. *Id.* Regarding medical hardship, [REDACTED] states that the applicant suffers from hypothyroidism, which is best treated in the United States. *Letter from [REDACTED] in Support of Motion to Reopen.*

Here, the record supports a finding that family separation is difficult for the applicant’s spouse and children. Further, the AAO gives considerable weight to the hardship that flows from the separation of parent and child. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam). However, the hardships presented, even when considered cumulatively, are not “substantially beyond the ordinary hardship that would be expected” based on one family member’s inadmissibility. *Matter of Monreal-Aguinaga*, 23 I&N Dec. at 62. Accordingly, the hardships to the

applicant's wife and children that arise from the separation of the family do not meet the "exceptional and extremely unusual hardship" standard set forth in 8 C.F.R. § 212.7(d).

The applicant's wife claims that multiple hardships would result from relocation to the United Kingdom. Specifically, ██████ requests consideration of her "a) strong patriotic and family ties to the United States, b) longevity of military career, c) guaranteed pension at the completion of 20 years of military service, d) difficulty in translating current career skills overseas, e) inability to relocate children abroad, and f) financial obligations in the United States." *Letter from ██████ in Support of Appeal.* ██████ also notes her daughters' strong relationship with their biological father in the United States, and she claims that her daughter's Attention Deficit Hyperactivity Disorder is better cared for in the United States. *Id.*

Given the applicant's wife's ties to the United States, it appears that relocation to the United Kingdom would impose various hardships on ██████ and her children. These hardships could be exacerbated if ██████ chooses to relocate before completing 20 years of military service in early 2011. *See Form G-325A, Biographic Information* (noting employment with the U.S. Navy since March, 1991). The applicant's wife may also face litigation with her former husband regarding the residence of their daughters. *See Letter from ██████* (granting ██████ permission to establish temporary residence for their daughters while she is on military orders); *cf. Divorce Decree* (appointing both parents as joint managing conservators of the children, and stating that ██████ "shall have the exclusive right to establish the children's primary residence without regard to geographical location"). However, the evidence in the record does not show that the hardships of relocation produce a "truly exceptional situation" that would meet the exceptional and extremely unusual hardship standard. *See Matter of Monreal-Aguinaga*, 23 I&N Dec. 56 at 62. Accordingly, the hardships to the applicant's wife and children that arise from relocation do not meet the elevated hardship standard set forth in 8 C.F.R. § 212.7(d).

In sum, although the applicant's spouse has presented claims of harm based on family separation or relocation, the record does not show that the difficulties, considered in the aggregate, would rise beyond the common results of removal or inadmissibility to the level of exceptional and extremely unusual hardship. *Matter of Monreal-Aguinaga*, 23 I&N Dec. at 62. Accordingly, although the applicant established his eligibility for a waiver under section 212(h)(1)(A) of the Act, he did not demonstrate that he merits a favorable exercise of discretion under 8 C.F.R. § 212.7(d), and the appeal will be dismissed.

ORDER: The appeal is dismissed.