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

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[redacted]

FILE: [redacted] Office: LONDON Date: SEP 0 9 2010

IN RE: [redacted]

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

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Shumway

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 applicant, a native and citizen of Sierra Leone, was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The record indicates that the applicant has a U.S. citizen fiancée and seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States.

In her decision dated February 27, 2008, the Field Office Director found that the difficulties the applicant's fiancée described she would face as a result of the applicant's inadmissibility did not rise to the level of extreme hardship. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly.

In a Notice of Appeal to the AAO (Form I-290B), dated March 25, 2008, counsel states that the applicant's fiancée would suffer extreme hardship as a result of the applicant's inadmissibility because the only viable option for relocation is Sierra Leone, a country where conditions are abysmal. She also states that the financial impact of relocation would be devastating to the applicant's fiancée. Finally, she states that the applicant is not a person of bad moral character. The AAO notes that a brief and additional evidence were submitted on appeal.

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 –
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> > (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-
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> > (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 the recently decided *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 indicates that the applicant was convicted on December 9, 2006 in London England of the following offenses: obtaining property by deception, using a copy of a false instrument, possessing false instrument with intent to use, and going equipped to cheat. The applicant was sentenced to eight months imprisonment.

The AAO notes that the applicant has not disputed the finding that his convictions are for crimes involving fraudulent and/or deceptive conduct. The applicant states in his declaration, dated February 19, 2007, that as a student he used a false passport to obtain credit and that he knew doing so was a crime. In *Matter of Serna,* 20 I&N Dec. 579 (BIA 1992), the Board held that "possession of an altered immigration document with the knowledge that it was altered, but without its use or proof of any intent to use it unlawfully, is not a crime involving moral turpitude." Furthermore, in *Matter of Flores,* 17 I&N Dec. 225, 230 (BIA 1980), the Board held that uttering and selling false or counterfeit paper related to the registry of aliens was a crime involving moral turpitude, even though intent to defraud was not an explicit statutory element. In the applicant's case he intended to use a fraudulent immigration document unlawfully. Thus, the AAO finds that the applicant has been convicted of a crime involving moral turpitude.

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

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . of subsection (a)(2) . . . if –
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> . . . .
>
> (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 AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relative that qualifies is the applicant's fiancée.[1] Hardship to the applicant is considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is

[1] The AAO notes that 8 C.F.R. 212.7(a)(1) specifically provides that K visa applicants shall file the same inadmissibility waiver as immigrant visa applicants. 8 C.F.R. § 212.7(a)(1)(66 Fed. Reg. 42587, Aug. 14, 2001).

established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996).

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios are possible should a waiver application be denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action to be taken is difficult, and it is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige,* 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, we interpret the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board stated in *Matter of Ige*:

> [W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent's deportation.

Id. See also Matter of Pilch, 21 I&N Dec. 627, 632-33 (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,* 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., In re 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).

The record of hardship includes: a brief from counsel, an affidavit from the applicant's mosque in Sierra Leone, an affidavit from the applicant's mother, an affidavit from the applicant's fiancée's uncle, copies of the applicant's fiancée's passport, a copy of the applicant's student visa, a letter from the applicant's roommate, country conditions information for Sierra Leone, a letter from the applicant, two statements from the applicant's fiancée, letters from the applicant's fiancée's three employers, a reference letter for the applicant, and copies of the applicant's degrees.

In her brief dated March 25, 2008, counsel states that the country conditions in Sierra Leone where the applicant's fiancée would have to relocate are abysmal and the financial impact of her departure from the United States would be devastating. Counsel states that the applicant is currently residing in the United Kingdom on a student visa and he is not authorized to live and work in the United Kingdom once his student status expires, so that his only relocation possibility is in Sierra Leone. The AAO notes that the record includes a copy of the applicant's student visa for the United Kingdom.

Counsel submits the excerpt on Sierra Leone from the Central Intelligence Agency (CIA) World Factbook, which states that Sierra Leone is an extremely poor nation with tremendous inequality in income distribution. The excerpt also states that the risk of infectious disease in Sierra Leone is very high, that the life expectancy for a female is 42.87 years old, and that about one third of the population was displaced during the civil war which ended in 2002.

In her brief counsel states that the applicant's fiancée is currently employed in three positions in the health care industry. Counsel states that the applicant's fiancée provides financially for herself, the applicant in the United Kingdom, and her relatives in Sierra Leone. Counsel states that the applicant's fiancée would not have the employment and income generating opportunities that she has in the United States in Sierra Leone. Counsel cites the CIA World Factbook, which states that nearly half of the working-age population engages in subsistence agriculture. Counsel also states that the applicant hopes to obtain a degree in nursing and would thus suffer financially as a result of relocating to Sierra Leone.

Finally, counsel states that the applicant is not a person of bad moral character and that after serving his jail sentence he successfully completed his Master of Science in Finance and Accounting. The record includes a letter from the applicant's friend, dated March 8, 2008. In this letter Mr. attests to the applicant's good moral character and states that the applicant's fiancée helps to support the applicant in the United Kingdom. The record also includes a copy of the applicant's degree from London South Bank University. The AAO notes that the statements submitted by the applicant and his fiancée support the assertions made by counsel.

The record also contains statements from the applicant's mother, the applicant's fiancée's uncle, and the Imam at the applicant's mosque in Sierra Leone attesting to the validity of the applicant's intent to marry his fiancée. The record also contains a copy of the applicant's fiancée's U.S. passport and Sierra Leone passport showing a total of 7 trips to the United Kingdom to visit the applicant.

The AAO acknowledges that every qualifying relative will experience hardship as a result of their family member being found inadmissible, but to qualify for a waiver under section 212(h) of the Act the applicant must show that this hardship rises to the level of extreme hardship. To show extreme hardship the applicant must detail the hardship experienced by his qualifying relative and submit documentation supporting the hardship. The applicant must show that his fiancée will suffer extreme hardship as a result of separation and as a result of relocating to Sierra Leone. The current record does not address the hardship that would result from separation. Furthermore, the details and documentation submitted regarding the applicant's fiancée relocating to Sierra Leone are insufficient for a finding of extreme hardship. The record indicates that the applicant's fiancée is from Sierra Leone and that the applicant's mother and the applicant's fiancée's uncle lives in Sierra Leone. In her statement dated March 24, 2008, the applicant's fiancée states that she sends money to her family in Sierra Leone and that her family ties in the United States include two uncles. The AAO recognizes that Sierra Leone is an extremely poor country, but the record does not indicate that someone with the background of the applicant's fiancée would live in extremely poor conditions upon her return to Sierra Leone. The CIA Worldfact Book states that Sierra Leone is an extremely poor country with tremendous inequality in income distribution. The current record does not indicate that the applicant and his fiancée would be living in extreme poverty upon relocation. On the contrary, the record suggests that given the applicant's level of education and the work experience of his fiancée in the health care industry, their employment opportunities are not on par with the majority of people living in Sierra Leone. Thus, the AAO cannot find that the applicant would suffer extreme hardship as a result of relocating to Sierra Leone.

The AAO notes that going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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 AAO finds that the current record does not establish that the applicant's fiancée will suffer extreme hardship as a result of the applicant's inadmissibility.

The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(h) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. *See* 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.