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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

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

Hr2

Date: **APR 04 2012** Office: BALTIMORE

FILE: [REDACTED]

IN RE:

Applicant: [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:

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.

Thank you,

*Michael Shumway*

for

Perry Rhew

Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Uganda who 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 a crime involving moral turpitude. He seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen wife and children.

The district director denied the Form I-601 application for a waiver, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the District Director*, dated October 7, 2009.

On appeal, counsel for the applicant asserts that the applicant's family members will suffer extreme hardship should the present waiver application be denied. *Correspondence from Counsel*, dated October 6, 2011.

The record contains, but is not limited to: statements from counsel; documentation in connection with the applicant's and his children's academic activities; medical documentation for the applicants wife and children; a psychological evaluation of the applicant's wife; documentation in connection with the applicant's family's business activities, income, and expenses; statements from the applicant, as well as the applicant's wife, children, and others; and documentation in connection with the applicant's criminal convictions. The entire record was reviewed and considered in rendering this decision.

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 has been convicted of multiple criminal offenses, including passing a bad check with the intent to defraud under Va. Code Ann. § 18.2-181 for his conduct on or about March 25, 2004, for which he received a suspended sentence of 12 months of incarceration. There is ample support that this conviction constitutes a crime involving moral turpitude, rendering the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.<sup>1</sup> The applicant does not contest his inadmissibility on appeal, and he requires a waiver under section 212(h) of the Act.

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] 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 [Secretary] that the alien’s denial

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<sup>1</sup> The applicant was also convicted of an offense relating to prostitution for his conduct on or about November 20, 1998, the unauthorized use of a vehicle for his conduct on or about May 20, 1999, and to offenses of driving under the influence for his conduct in 1999. The record shows that the applicant also pled guilty to driving without a license on or about August 30, 2006.

of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . .; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

A waiver of inadmissibility under section 212(h) 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, parent, son, or daughter of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's wife and children are the qualifying relatives in this case. 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 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 shows that the applicant’s wife, two daughters (ages 10 and 12), and 18-year-old stepson are all U.S. citizens. In correspondence dated October 6, 2011, counsel reported that the applicant’s fourth child was born premature at two pounds and he continued to live as of the date of the letter.

The record shows that the applicant’s wife was compelled to take leave without pay during her last pregnancy due to complications and health concerns. The applicant’s wife has also been diagnosed with hypertension, and she has been prescribed medications, though the record is not clear regarding which were exclusive to her needs due to prior pregnancy. A report dated October 27, 2009, conducted by a clinical therapist, [REDACTED] indicates that the applicant’s wife is under severe stressors due to the possibility of the applicant’s removal, and that their family will be unable to cope with the loss of the applicant’s presence. [REDACTED] recommended that the applicant’s wife engage in psychotherapy, individual and family counseling, and a psychiatric evaluation to determine whether she requires psychotropic medications. The applicant states that his absence from his household in the United States will negatively impact his family’s Christian values. He asserts that hardship his children experience will impact his wife.

In a statement dated October 30, 2009, the applicant explains that he manages the finances of his household. He provides evidence to show that he operates a business, yet the most recent tax return provided for 2008 indicates that the company operates at a loss. The record indicates that the applicant’s wife continues to work for the United States Social Security Administration, despite her temporary leave without pay.

In a statement dated June 8, 2009, the applicant indicated that conditions in Uganda are poor, including inadequate academic activities for his children and public health problems. The applicant noted that he left Uganda decades ago, and that the country experiences armed conflict and political upheaval.

Upon review, the applicant has shown that his wife will suffer extreme hardship should the present waiver application be denied. The record shows that the applicant’s wife will experience extreme

hardship should she relocate to Uganda with the applicant. The AAO acknowledges that conditions in Uganda pose significant challenges, including the risk of crime and terrorist activity, as well as health concerns and a lack of adequate medical facilities. *Uganda: Country Specific Information*, U.S. Department of State, dated December 28, 2011. It is evident that the applicant's wife would experience significant emotional and financial challenges should she and her children relocate to Uganda where they would be faced with adapting to conditions that differ significantly from the United States. The applicant's wife would be faced with the loss of her current employment, inability to reside in the home that they own, separation from her family in the United States, and the emotional hardship of sharing in her children's difficulty in being separated from their communities, family, and academic opportunities. The AAO acknowledges that the applicant's wife was pregnant in 2010, and that counsel contends that she gave birth to a premature child. The applicant has not presented a birth certificate or medical documentation for this additional child, but due consideration is given to the applicant's wife's documented health needs in light of the lack of adequate medical care in Uganda.

The record also shows that the applicant's two daughters will endure extreme hardship should they relocate to Uganda. They were each born in the United States and have lived their entire lives in the country. As discussed above, conditions in Uganda are difficult, and the applicant's daughters would experience a dramatic change in culture and environment during a formative period. They would be separated from their country and culture, lose access to their academic opportunities and community, and interrupt the continuity of the routine health care they receive in the United States. They would share in the emotional and economic challenges of their family. The applicant's daughters are fully integrated into the American lifestyle, and the record supports that their challenges in Uganda would be in excess of those commonly faced when children relocate abroad due to the inadmissibility of a parent. *See Kao and Lin*, 23 I &N Dec. at 50-51.

The applicant has also shown that his wife will suffer extreme hardship should she remain in the United States without him. The applicant's wife has three documented children, ages 10, 12, and 18, and the record references a newborn and an additional adult child. The applicant has not shown that his wife would be unable to meet their basic needs in his absence, but it is evident that she would face significant economic challenges should she act as a single parent for these children, and that she would benefit from the applicant's contribution. The applicant has provided numerous letters from individuals who attest to his role in his family and support of his children, and he has shown that he plays an integral role in the day-to-day functioning of his household, and the guidance and support of their children. The applicant's wife would endure unusual burdens in maintaining their household and guiding their children alone. The AAO gives due consideration to the applicant's wife's diagnosis of hypertension and related medical needs, and the opinion of Mr. Inyang that she is experiencing severe stressors that requires counseling and evaluation from a psychiatrist.

The record supports that the applicant's daughters will also face extreme hardship should they remain in the United States without the applicant. It is evident that, as members of a multi-child household with a single parent, they will share in the emotional hardship experienced by the applicant's wife. They have resided with the applicant and the applicant's wife for the duration of their lives, and now separating them from the applicant will create significant psychological difficulty, particularly as they cope with the loss of parental support as the applicant's wife

compensates for the applicant's former responsibilities. The AAO finds that the strain on the applicant's household would be greater than that commonly experienced when a parent resides abroad due to inadmissibility, and that his 10- and 12-year-old daughters would suffer extreme hardship.

Considering all of these hardships in aggregate, the applicant has established that his wife and daughters will suffer extreme hardship should the present waiver application be denied, whether they remain in the United States without him or relocate to Uganda to maintain family unity.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. All negative factors may be considered when deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant has been convicted of multiple criminal offenses, including at least one crime involving moral turpitude. The applicant entered the United States in 1997 in B nonimmigrant status with authorization to remain until March 17, 1998, and he failed to depart the United States within the authorized period and has remained without a legal immigration status.

The positive factors in this case include:

The applicant's U.S. citizen wife will suffer extreme hardship should the applicant reside outside the United States. The applicant's U.S. citizen children will face significant hardship should he depart the United States. The applicant has resided in the United States since 1997, and he will face difficulty should he return to Uganda. The applicant has provided emotional and financial support for his U.S. citizen wife and children, including during a period of his wife's illness. The applicant has made substantial efforts to further his education, including studying criminal justice as a graduate student at [REDACTED] in Vienna, Virginia. The applicant has operated a business in the United States, and his comments in the record show that he values his employees and his contribution to the U.S. economy.

The applicant's criminal offenses occurred over an approximately seven year period, and they cannot be characterized as an isolated incident or transgressions of youth. It is noted that the applicant was convicted in 1998 with a prostitution related offense. He was charged for another prostitution related offense in 2005. The applicant has not provided complete documentation of the associated proceedings, though it appears the charge was dismissed pursuant to a diversion program which would render it a conviction for immigration purposes. The 2005 charge and subsequent proceedings call into question whether he has ceased activity related to prostitution. The applicant's criminal activity calls his character into question. However, his last offense of driving without a license in 2006 presented no aggravating circumstances and did not constitute a crime involving moral turpitude. His act of passing a bad check with intent to defraud occurred in 2004, approximately

eight years ago. The record does not show that the applicant has engaged in criminal activity since 2006. Positive factors in this case support that he has made efforts to reform his behavior including furthering his academic training, supporting his family, and operating a business and employing others. As discussed above, the applicant's wife and children will face extreme hardship should he reside outside the United States. The AAO finds that the positive factors in this case overcome the negative factors, and the applicant warrants a favorable exercise 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 remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden that he merits approval of his application.

**ORDER:** The appeal is sustained.