identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

PUBLIC COPY

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

U.S. Citizenship and Immigration Services

[redacted]

H2

Date: AUG 14 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 Sierra Leone who was found to be inadmissible under 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. The applicant is the spouse of a U.S. citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel contends that the applicant's husband will be devastated if the waiver application is denied. Counsel declares that the applicant's husband lost his job in November 2008 due to absenteeism related to health problems. Counsel states that the applicant's husband has pain from deep venous thrombophlebitis (DVT), which has prevented him from seeking employment. Counsel states that the applicant's income from nursing, combined with rent which is received from their house, supports the applicant and her husband and daughter so they can live in a small apartment. Counsel challenges U.S. Citizenship and Immigration Services' (USCIS) assertion that only a cardiologist or internist is qualified to attest to the applicant's medical condition. Counsel argues that USCIS should have accepted the medical opinion of [redacted], who is a gynecologist and has been treating the applicant and her husband. Counsel asserts that nursing experience and emotional support of the applicant has helped the applicant's spouse. Counsel contends that war ravaged Sierra Leone and returning there after 10 years absence will be difficult. Counsel states that the applicant's parents are dead and most of her family members now live in other countries. Counsel declares that Sierra Leone has high unemployment and the applicant will not be able to obtain a job which will allow her to survive. Counsel states that the applicant's daughter speaks only English and will endure difficult challenges in Sierra Leone, where female genital mutilation is prevalent and educational opportunities are extremely limited.

We will first address the finding of inadmissibility.

The applicant was found to be inadmissible for having been convicted of a crime involving moral turpitude. 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.

On July 31, 2001, the applicant pled guilty to theft under $500 in Maryland. The judge sentenced the applicant to serve six months in jail, the execution of which was suspended, and placed her on probation for six months and ordered that she pay restitution of $239.17.

The director found that the applicant was convicted of a crime involving moral turpitude. As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the director.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is found under section 212(h) of the Act. That section provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
>
> . . .
>
> (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 . . .

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 21 I&N Dec. 296 (BIA 1996).

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.

In rendering this decision, the AAO will consider all of the evidence in the record, which consists of affidavits, letters, financial records, invoices, photographs, and other documentation.

Counsel's assertion that the applicant's husband and daughter are supported by the applicant is consistent with the affidavits by the applicant's husband and the applicant. The applicant's husband stated in the affidavit dated June 2009, that he has been financially and emotionally supported by the applicant since he lost to job in November 2008 due to DVT. Unemployment benefit statements for the applicant's husband reflect payments made in 2008 and 2009. [redacted] corroborates the serious health problems of the applicant's husband as [redacted] stated in the letter dated June 29, 2009, that the applicant's husband, who is well-known to him, has coronary artery disease/syndrome, DVT, and pulmonary embolus and is on an anti-coagulant therapy and is at risk for a heart attack. The applicant asserted in her affidavit dated June 27, 2009, that since her husband lost his job, she has supported her family, earning $60,000 a year as a nurse. The executive director of Infinity Nursing Services Inc. stated in the letter dated August 11, 2008, that the applicant's wife has been employed as a contract nurse since September 2007. Thus, in view of the serious health problems of the applicant's husband and his emotional and financial dependency on his wife, we find the applicant's husband would experience extreme hardship if he remains in the United States while his wife relocates to Sierra Leone.

As to the applicant's husband relocating to Sierra Leone to live with his wife, the applicant's husband stated in his affidavit that he cannot follow his wife to Sierra Leone because living conditions there are deplorable and he cannot imagine trying to eke out an existence and that since he has lived in the United States for many years, he would be targeted and become the victim of crime. The applicant's wife contended in her affidavit that she has no family members in Sierra Leone, and that crime is increasing in Sierra Leone, and they would be at risk for kidnapping due to her husband's having lived in the United States for many years, and her daughter's lack of knowledge of the culture and language in Sierra Leone. The applicant stated that they would not be able to adequately support themselves as, even for people with a college degree, there is a scarcity of jobs and it would be nearly impossible for her to either get a job in Sierra Leone without having personal connections or knowing people in power or have enough money in which to start a business. The submitted U.S. Department of State report is in accord with the contention that poverty is widespread in Sierra Leone (the minimum wage was $8.30, which did not provide a decent standard of living for a worker and family). U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2008: Sierra Leone* (February 25, 2009). The report is consistent with the applicant's wife's claim that it would be unlikely that she would be able to obtain a job for which she is qualified and which will pay an adequate wage to ensure they do not experience significant hardship; the report stated that women face widespread legal and societal discrimination and do not have equal access to economic opportunities and employment. *Id.* The serious health problems of the applicant's husband would severely limit his ability to obtain a job for which he is qualified. When these hardship factors are considered together, we find they demonstrate that the applicant's husband will experience extreme hardship if he relocates to Sierra Leone with his wife.

Based upon the record before the AAO, the applicant in this case establishes extreme hardship to a qualifying family member for purposes of relief under section 212(h) of the Act.

In *Matter of Mendez-Moralez,* 21 I&N Dec. 296, 301 (BIA 1996), the Board stated that once eligibility for a waiver is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion in favor of the waiver. Furthermore, the Board stated that:

> In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

Id. at 301.

The AAO must then, "[B]alance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country. " *Id.* at 300. (Citations omitted).

The adverse factor in the present case is the applicant's criminal conviction for theft in July 2001. The favorable factors in the present case are the positive reference regarding the applicant's character by her interim rector, spouse, friend, and employers. The AAO finds that the applicant's crime is a serious violation of the law; nevertheless, when taken together, we find the favorable factors in the present case outweigh the adverse factor, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained and the waiver application will be approved.

ORDER: The appeal is sustained.