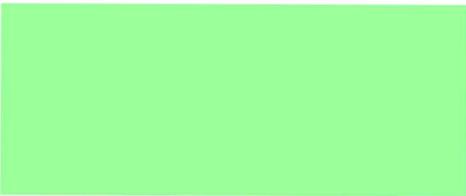




U.S. Citizenship
and Immigration
Services

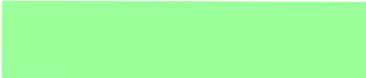
(b)(6)



Date: **APR 05 2013**

Office: LONDON

FILE: 

IN RE: Applicant: 

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), and 8 U.S.C. § 1182(h), respectively

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 in accordance with the instructions on 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 Nigeria and resident of the United Kingdom who was found to be inadmissible under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for seeking admission into the United States by fraud or willful misrepresentation and section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to sections 212(i) and 212(h) of the Act, 8 U.S.C. § 1182(i), and 8 U.S.C. § 1182(h), respectively. The director determined that the applicant had failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel asserts that on January 31, 2004 the applicant was arrested in [redacted] for possession of a photo-switched passport while attempting to board an airplane departing for the United States, and on February 4, 2004, was convicted for using a false instrument for other than prescription for scheduled drug, attempt/obtain property by deception under the Theft Act of 1968, and for obtaining leave to enter/remain in the United Kingdom by means including deception pursuant to the Immigration Act of 1971. Counsel argues that these convictions qualify for the petty offense exception under section 212(a)(2)(A)(ii) of the Act because they arose out of a single scheme—the use of the fake passport, which makes it a single crime; the total sentence for the crimes is four months; and the maximum sentence possible for each crime does not exceed six months. Next, counsel contends that the applicant is not inadmissible under section 212(a)(6)(C)(i) of the Act. Counsel cites *Matter of D-L*, 20 I&N Dec. 409 (BIA 1991), to assert that the fraud or misrepresentation must be made to an authorized official of the United States government, and the applicant “was in possession of [a] fake passport, but the act was only in front of U.K. official, not an Untied [sic] States official . . . she did not defraud or misrepresent herself before the United States government.”

We will first address the finding of inadmissibility.

The director found the applicant was inadmissible for having been convicted of crimes 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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(b)(6)

(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 police certificate dated May 19, 2010 shows that on January 31, 2004 the applicant committed the crimes of using a false instrument for other than prescription for schedule drug, attempt/obtain property by deception, and obtain leave to enter/remain in the United Kingdom by means including deception. On February 2, 2004, the court convicted the applicant of these crimes and sentenced her to a concurrent sentence of four months imprisonment for each offense.

Counsel does not dispute that the applicant's convictions are for crimes involving moral turpitude, but argues that the crimes fall within the petty offense exception under section 212(a)(2)(A)(ii) of the Act because her crimes arose out of a single scheme – the use of the fake passport – and should therefore be regarded as a single crime. The petty offense exception applies to an alien who has been convicted of a single crime involving moral turpitude. In the instant case, the applicant has multiple convictions for crimes involving moral turpitude, and the single scheme exception asserted by counsel relates to deportability under section 237(a)(2)(A) of the Act and is not relevant in the context of inadmissibility under section 212(a). Furthermore, counsel cites to no legal authority in support of his argument that the applicant's convictions fall within the petty offense exception. We therefore find the director correct in concluding the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude.

The applicant asserts that she committed the crimes because she was fleeing from an arranged marriage to an elderly man, who threatened to take her to Africa. The Board held in *In Re Max Alejandro Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996), that collateral attacks on a conviction do not operate to negate the finality of the conviction unless and until the conviction is overturned. (citations omitted). A collateral attack on a judgment of conviction cannot be entertained “unless the judgment is void on its face,” and “it is improper to go behind the judicial record to determine the guilt or innocence of an alien.” *Id.*

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:

(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)(6)

- (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 director decided that the applicant was inadmissible for seeking to procure admission into the United States by fraud or willful misrepresentation.

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

- (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.

Counsel cites *Matter of D-L-* to assert that the fraud or misrepresentation must be made to an authorized official of the United States government. Counsel argues that the applicant possessed a fake passport, "but the act was only in front of U.K. official, not an Untied [sic] States official" and that the applicant did not misrepresent her identify before an authorized official of the United States Government. However, the Board held that outside of the context of the transit without visa status, an individual is excludable for seeking entry by fraud or willful misrepresentation of a material fact where there is evidence that the individual "presented *or intended to present* fraudulent documents or documents containing material misrepresentations to an authorized official of the United States Government in an attempt to enter on those documents." 20 I&N Dec. 409, 412 (BIA 1991). The applicant states in the attachment to the waiver application that she attempted to board an airplane and depart from the United Kingdom using false documents belonging to a friend. This action can provide a basis for inadmissibility under section 212(a)(6)(C) of the Act, to the extent the applicant used false documents in an attempt to board an airplane departing for the United States with the intent to present those documents again to a U.S. government official and gain admission into the United States by the misrepresentation of her identity and eligibility for admission. There is no evidence that the applicant had any other intent than that of again presenting the documents in question to a U.S. government official upon the plane arriving in the United States.

Section 212(i) of the Act provides a waiver for fraud and material misrepresentation. That section states:

- (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. In that the hardship standard for the section 212(i) waiver is more difficult to meet than the section 212(h) standard, the AAO will apply that standard in determining hardship here. Thus, hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The qualifying relative in the instant case is the applicant's U.S. citizen fiancé. If extreme hardship to a qualifying relative is established, then the determination must be made whether an 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 1292 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 applicant's U.S. citizen fiancé declares in the hardship statement dated July 22, 2010 that a family should not be separated and a man is not complete without a spouse. He contends that if separated from his spouse he will not be able to have children and will be financially burdened. The applicant contends in the undated hardship statement that she has a close relationship with her fiancé, who has been financially assisting her since 2007, and that she is 35 years old and needs to start a family.

In the instant case, the claimed hardships to the applicant's fiancé in remaining in the United States while the applicant lives in [REDACTED] are emotional and financial in nature. Though the applicant's fiancé claims financial hardship due to separation, the Biographic Information (Form G-325) shows the applicant has been employed as a customer service representative since February 2007, and there is no evidence in the record consistent with the claim of financial hardship to the applicant's fiancé from separation. We acknowledge that the applicant contends that she and her fiancé have a close relationship, but when the asserted hardships are considered together, they fail to establish that the hardship to the applicant's fiancé is extreme in that it is more than the common or typical results of inadmissibility. The applicant makes no claim of hardship to her fiancé in relocating to [REDACTED] to live with her.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

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. *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.