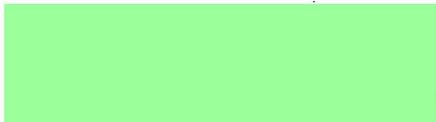


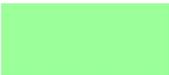


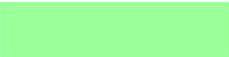
U.S. Citizenship  
and Immigration  
Services

(b)(6)



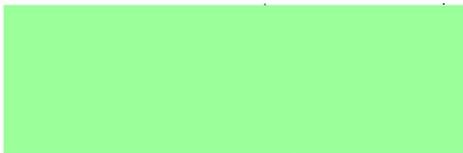
DATE **FEB 13 2013** Office: ST. PAUL, MN

FILE: 

IN RE: Applicant: 

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:



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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, St. Paul, Minnesota. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Liberia 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's spouse and six children are U.S. citizens. The applicant is applying for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States.

The field office director determined that the applicant failed to establish extreme hardship to a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 28, 2010.

On appeal, counsel details the hardship that the applicant's qualifying relatives would experience if his waiver application is denied. *Form I-290B*, received July 29, 2010.

The record includes, but is not limited to, counsel's brief, financial records, medical records, information on autism and educational records. The entire record was reviewed and considered in rendering a decision on the 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 –

(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 (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 AAO notes that the United States Court of Appeals for the Eighth Circuit has accepted the methodology used in *Matter of Silva-Trevino*. See *Bobadilla v. Holder*, 679 F.3d 1052 (8<sup>th</sup> Cir. 2012).

The record reflects that on August 17, 2009 the applicant was convicted of four counts of theft by swindle in violation of Minnesota Statutes § 609.52.2(4), and he was sentenced to 364 days in the workhouse and to pay restitution for \$57,165.56. As the applicant has not contested his inadmissibility on appeal, and the record does not show that determination to be in error, we will not disturb the finding of inadmissibility under section 212(a)(2)(A) of the Act.

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 –

.....

(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 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 spouse and children are the qualifying relative 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-Morales*, 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 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.

Counsel states that: the applicant’s spouse suffers from thyroid disorder and severe carpal tunnel syndrome which makes daily physical activity and sleep very difficult; she was subject to female genital mutilation and ritual scarring and she fears that her tribe would subject her children to this or a ritual involving severe mutilation for boys; she has depression and anxiety due to recently confronting her past trauma; the applicant’s son, [REDACTED] was diagnosed with autism and he has undergone regular therapy with speech pathologists and autism specialists, which would be unavailable in Liberia; and Liberia’s recent and violent history of civil war has rendered many people mentally disabled and the government does not have adequate resources to handle them.

Counsel states that Liberia is in the wake of years of civil war and it experiences dramatic levels of poverty, illness and deprivation; unemployment is in the range of 85%; and the applicant’s spouse is a licensed practical nurse and would likely be unable to secure employment in her field.

The applicant’s spouse states that she would fear for her children’s safety in Liberia and she details her experience with female genital mutilation in Liberia and a Sande initiation involving cuts to the lower back and buttocks.

[REDACTED] medical records reflect that he was diagnosed with active autistic disorder, active, unspecified delay in development, other symptoms involving nervous and musculoskeletal systems, behavioral feeding difficulties, lack of coordination and unspecified lack of normal physiological development. The record reflects that he is receiving speech pathology services. The record includes articles stating that there is a lack of services for individuals with disabilities in Liberia; no

autism organizations were found in Liberia from a search on an autism website; and a lack of awareness and resources prevent many children with autism from getting in help in Africa.

The record also includes information on human rights and health issues in Liberia. The record includes a medical letter verifying the applicant's spouse's claims of female genital mutilation and the Sande initiation. Her medical records reflect that she has a long history of carpal tunnel syndrome; she has managed it with braces, ibuprofen, ice and physical therapy; the pain is keeping her up at night; she was prescribed narcotics; and she presented with a thyroid problem.

The record reflects that the applicant's son has autism and he is receiving help in the United States. It does not appear that he could receive similar, or any, help in Liberia. The AAO notes the hardship that this would cause the applicant's spouse. In addition, the applicant's spouse has documented a traumatic experience in Liberia and her fears for her children are supported. The applicant's spouse would be caring for any of her children who relocate with her or experience separation from them. She also has documented medical issues. Considering these factors, and the normal results of relocation, the AAO finds that the applicant's spouse would experience extreme hardship if she relocated to Liberia.

Counsel states that: the applicant's spouse has struggled to financially support the applicant and their children; the applicant does not have work authorization; the applicant's spouse has fallen behind on her mortgage payments and the home has been foreclosed on; she has had to visit a food shelf, is behind on her student loans, has taken out a title loan against her car and has pawned her wedding ring; the applicant has a master's degree and an MBA and could find gainful employment with a green card; the applicant's spouse has experienced more mental stress due to the applicant's immigration matters; she is under the care of a mental health practitioner to deal with post-traumatic stress disorder and adjustment disorder with anxiety and depressed mood; she is on three medications; she suffers from thyroid disorder and severe carpal tunnel syndrome which makes daily physical activity and sleep very difficult; and the applicant's son, [REDACTED] was diagnosed with autism and he has undergone regular therapy with speech pathologists and autism specialists.

The applicant's spouse details how the applicant helps care for the children and states that it would be nearly impossible for her to meet her financial obligations without the applicant.

The record includes documentary evidence that the applicant's spouse's mortgage loan is in default and has been referred for foreclosure, her student loan is nearing default, she pawned a ring, she secured a loan against her car and she is being sued for an anesthesia debt. Her medical records reflect that she is taking trazadone, clonazepam and citalopram, and she was assessed with post-traumatic stress disorder and adjustment disorder with anxiety and depressed mood. As mentioned, her medical records reflect that she has a long history of carpal tunnel syndrome; she has managed it with braces, ibuprofen, ice and physical therapy; the pain is keeping her up at night; she was prescribed narcotics; and she presented with a thyroid problem, and [REDACTED] medical records reflect that he was diagnosed with active autistic disorder, active, unspecified delay in development, other symptoms involving nervous and musculoskeletal systems, behavioral feeding difficulties, lack of coordination and unspecified lack of normal physiological development.

The record reflects that the applicant's spouse has serious medical and emotional issues. In addition, she has serious financial issues that the applicant could help alleviate. The applicant also assists in caring for their children, including one who has autism. Considering these factors, and the normal results of separation, the AAO finds that the applicant's spouse would experience extreme hardship if she remained in the United States.

As the applicant has established extreme hardship to his spouse, the AAO need not make a determination regarding whether his children will face extreme hardship.

The AAO additionally finds that the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the alien bears the burden of proving eligibility in terms of equities in the United States which are not outweighed by adverse factors. *See Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

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).

*See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). The AAO must then "balance 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 factors in the present case are the applicant's convictions.

The favorable factors include the presence of the applicant's U.S. citizen spouse and children, extreme hardship to his spouse, hardship to his children, the applicant's authorized stay in the United States and lawful employment in the United States. The AAO also notes that the applicant has paid \$30,000 in restitution and he has completed the workhouse requirement of his sentence. The applicant's pastor details his volunteer work with transporting an elderly couple and heading the conflict resolution committee.

(b)(6)

The AAO finds that the criminal and immigration violations committed by the applicant cannot be condoned. Nevertheless, the AAO finds that taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained and the waiver application will be approved.

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, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained. The waiver application is approved.