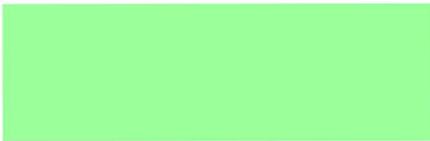


(b)(6)

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

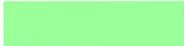


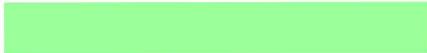
U.S. Citizenship  
and Immigration  
Services



Date: FEB 27 2013

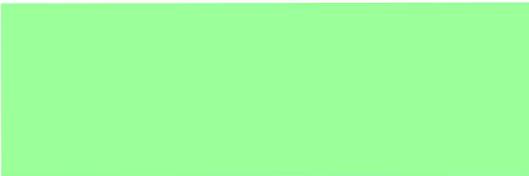
Office: TAMPA, FLORIDA

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.

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,

A handwritten signature in cursive script that reads "Michael Shumway".

f. Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Tampa, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

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 crimes involving moral turpitude. The director indicated that the applicant sought 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 has two convictions for theft, and that her crimes involve moral turpitude. Counsel states that the applicant received a business management and accounting degree in Liberia and has handled other people's money throughout her life, and continues to do so as a cashier at a [REDACTED]. Counsel argues that the applicant was either extremely smart in stealing or the events at the [REDACTED] are not consistent with the applicant's character. Counsel states that [REDACTED] investigation of 214 "suspicious" transactions of the applicant over a three month period resulted in two charges of theft. Counsel states that [REDACTED] does not have a problem with the theft charges because the applicant is employed there as a cashier. Counsel states that the applicant has an alternative explanation as to the criminal charges, and while the applicant does not admit to stealing money from [REDACTED] she takes full responsibility for the charges because of her failure to follow company policy. Counsel suggests that the applicant may have been "framed" for the crimes or as an undocumented worker was not able to defend herself in criminal court. Counsel argues that if the applicant's long history of employment with financial institutions for over 25 years is balanced against her two incidents at [REDACTED] whether she actually committed the theft crimes should be questioned.

Counsel asserts that the applicant has a good relationship with her spouse, but her prior two husbands were abusive. Counsel describes the upbringing, prior marriage, and work ethic of the applicant's third husband. Counsel contends in Liberia the applicant's husband would be poor and a victim of crime because "every American is considered rich." Counsel asserts that the applicant's husband states that he will not live in Liberia for "it is an undeveloped country, it's very poor, there are no opportunities at all, there is a lot of crime." Counsel argues that the U.S. Department of State report on Liberia confirms that it is dangerous in Liberia, people are poor, and the system is corrupt. Counsel states that the applicant's 70-year-old husband would find it difficult in Liberia and would not be within a close proximity to a hospital. Counsel asserts that the applicant's husband has no family members or social contacts in Liberia, and does not intend to live there with the applicant. Counsel contends that removing the applicant's husband from the country where he has lived his entire life and where his family lives to start over in a strange culture would be extreme hardship, for the AAO has stated that removing a person from his family is considered the single most hardship factor. Counsel asserts that the applicant will ensure her husband's independence.

We will first address the finding of inadmissibility. Section 212(a)(2)(A) of the Act states, in pertinent parts:

(b)(6)

(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 (Board) 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.)

The record reflects that the applicant was found guilty and convicted of theft over \$300 (count 1) and theft under \$300 (count 2) in Florida on January 18, 2001. The judge sentenced the applicant to serve two years in prison for the first count, but imposed a two-year suspended sentence, and placed the applicant on probation for 18 months and ordered that she perform community service. The judge sentenced the applicant to serve 18 months in prison for the second count, imposed an 18-month suspended sentence, and ordered that her sentence run concurrently with the first offense.

The applicant argues that she pleaded guilty to theft, but did not commit the crimes. She asserts that she takes full responsibility for the charges because she failed to follow company policy in regards to cash refund receipts, signing off on the cash register, and personal information provided by customers. She contends that she never stole money from [REDACTED], but was careless and that money could have been stolen during her shift or under her cashier number. The applicant asserts that she provided an explanation for the video which showed that she put her hand in her pocket, but that the judge still found her guilty. She contends that the judge did not order that she pay restitution. As to the applicant's assertion of innocence, 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.*

While asserting her innocence, the applicant has not disputed on appeal that the statutory offense of which she was convicted is a crime involving moral turpitude, and as the record does not show the

finding of inadmissibility to be erroneous, we will not disturb the finding of the field office director.

Although not addressed by the director, the record conveys that at the adjustment of status interview held on February 28, 2001, the applicant did not disclose the theft convictions, so we need to determine whether the applicant is also inadmissible under section 212(a)(6)(C) of the Act for misrepresentation.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the field office or service center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a de novo basis).

Part 3 of the Form I-485, Application to Register Permanent Residence or Adjust Status, question 1 asks: "Have you ever in or outside the U.S. . . . been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations?" In a hand written annotation the adjudication officer wrote "3 times told officer she was never arrested. Later admitted was arrested for theft."

In regard to inadmissibility for material misrepresentations, 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.

The record shows that the applicant was in criminal proceedings for theft since August 16, 2000 and was still in criminal proceeding at the time of her adjustment interview. In that the applicant willfully sought to conceal at the adjustment interview that she was arrested and in criminal proceedings, we find she is inadmissible under section 212(a)(6)(C) of the Act for seeking to procure a visa and admission into the United States based on the willful misrepresentation of the material fact of her criminal history and eligibility for a visa and admission into the United States.

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

- (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. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. Since the section 212(i) waiver is a higher standard than that of the section 212(h), we will apply the higher standard in this decision. Thus, if extreme hardship to a qualifying relative is established, USCIS then assesses whether an 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 1292, 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.

The applicant states in the affidavit dated February 23, 2011 that she was a member of the middle class in Liberia and graduated from the [REDACTED] with a bachelor's degree in business management in 1984. She states that she has worked at [REDACTED] as a cashier since 2000 and is an accounts receivable clerk with [REDACTED]. She asserts that being involved in her community and church, and living in the United States since 1986. The applicant describes her relationship with [REDACTED], [REDACTED], and [REDACTED] and asserts that she has a close relationship with her husband.

The applicant's husband asserts in the undated affidavit having a close bond with his wife. He describes his childhood, the jobs he held, and the marriage to his first wife. The applicant's husband states that he cannot depend on his adult children to take care of him as he gets older, but the applicant is a good companion who will help him to remain independent. The applicant's husband states that he cannot live in Liberia with his wife because it is an underdeveloped country that is very poor, with no opportunities, and has lots of crime. He asserts that Liberia is worse than the poverty that he experienced in his childhood and that he has no family members or support system in Liberia and doubts whether his money will last there. The applicant's husband declares that his wife is pressured to help her family members in Liberia who have nothing. He states that he still works, is active in his community and church, and has a home life with the applicant.

The asserted hardship to the applicant's husband in remaining in the United States while his wife lives in Liberia is emotional in nature. The applicant's husband claims that his wife is a good companion and will assist him to remain independent, but the record does not reflect that the applicant's husband has a serious health problem affecting his ability to function for it shows he is employed and active in the community. The applicant and her husband have been married since February 20, 2009. While we acknowledge that the applicant's husband will experience emotional hardship if separated from his wife, the applicant has not demonstrated that the emotional hardship to her husband as a result of separation would be more than the common or typical results of inadmissibility and thus extreme.

The claimed hardships to the applicant's husband in relocating to Liberia with his wife are risk to his personal safety, living in poverty in a poor country where there are no opportunities, not living within close proximity to a hospital, and having to adapt at the age of 70 to life in a foreign country

and separated from his life and family members in the United States. Counsel argues that the U.S. Department of State report on Liberia shows that it is dangerous in Liberia, people are poor, and the government is corrupt. The U.S. Department of State Country Reports on Human Rights Practices – 2009 for Liberia states that in 2005 Ellen Johnson Sirleaf won presidential elections in a generally free and fair process, and discusses human rights violations in Liberia and corruption in the government, which has a population of approximately 3.5 million people. U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2009: Liberia* (March 11, 2010). Although we acknowledge these general conditions, we do not find them fully representative of the conditions the applicant's wife, who has been and appears to have the means and background to again be a member of middle class, will face in Liberia. The applicant has not provided any documentation that establish that her husband will live in dire poverty in Liberia, that they will have no employment or economic opportunities there, and her husband requires medical care that is unavailable in Liberia. While we recognize that the applicant's 70-year-old husband will separate from family, community, and business ties and from the place he has lived his entire life to adjust to life in a foreign country, we believe that when the hardship factors are considered together, they do not demonstrate that the financial and emotional hardship to the applicant's husband in relocation to Liberia is extreme and more than the common or typical results of inadmissibility.

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 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 not met that burden. Accordingly, the appeal will be dismissed and the waiver application will be denied.

**ORDER:** The appeal is dismissed.