



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

Date: **JAN 29 2013**

Office: LAWRENCE, MA 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.

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 Field Office Director, Lawrence, Massachusetts, 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 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 director stated 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 his bar to admission would impose extreme hardship on a qualifying relative, and that a favorable grant of discretion was warranted. As a consequence, the director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel contends that the applicant demonstrated extreme hardship and the director erred in the factual and legal findings and in weighing the hardships. Counsel states that the applicant's lawful permanent resident wife has bipolar disorder, and at times was hospitalized and unable to work. Counsel declares that the applicant's wife is a preschool teacher and has health care from her employer, and relies on the applicant to drive her to work due to her medical condition. Counsel asserts that the applicant's wife and their two U.S. citizen daughters are financially and emotionally dependent on the applicant, who manages his own certified public accountant firm. Counsel states that the applicant supports a daughter in medical school, and even though the title of the house is in the name of the applicant's wife, the applicant pays the mortgage. If the applicant's family members remained in the United States while the applicant lived in Nigeria, counsel contends that the applicant would lack the means in which to support himself, and the applicant's family members would not be able to support themselves in the United States without the applicant's income. Counsel argues that the applicant's wife would no longer have the applicant drive her to work, and that the applicant's daughters have just started their careers and cannot assist their mother. Counsel declares that the director erred in not giving proper weight to financial hardship and in assuming that the applicant's daughters do not need their father's financial assistance. Counsel states that one of the applicant's daughters has a job but still lives at home, and the other daughter is in the U.S. Navy and that the Board has never held that the potential and speculative future income of a qualifying relative could negate current need for financial support. Counsel asserts that the director erred in giving improper weight to family separation, as the applicant's wife had a nervous breakdown due to separation from the applicant. Counsel declares that the applicant's family members would experience emotional hardship knowing that the applicant would be subjected to possible physical harm due to societal and religious violence in Nigeria.

Counsel indicates that the applicant's wife has a few family members in Nigeria and that the director erred in stating that the applicant's wife could return to Nigeria with minimal negative consequences. Counsel declares that the submitted documentation establishes that it would be dangerous for the applicant's wife and daughters to join the applicant to live in Nigeria, and that they would encounter gender discrimination and economic disadvantage there. Counsel contends that the applicant's wife suffered while living in Nigeria and due to separation from her husband. Counsel declares that the applicant's daughters are settled in the United States and cannot relocate to Nigeria and the applicant's wife would miss her daughters if she relocated to Nigeria without them. Counsel

asserts that the applicant's wife requires professional treatment available in the United States for her mental health disorders.

Counsel argues that the director erred in diminishing the applicant's wife's hardships due to her short status as a lawful permanent resident. Counsel contends that the applicant's wife has been a lawful permanent resident since 2009, but has resided here for many years. Counsel contends that the director failed to consider the hardship factors in the aggregate, and did not properly consider the cumulative weight of having three qualifying relatives who each would suffer extreme hardship.

Counsel asserts that the director based his determination that a favorable grant of discretion was not warranted on the erroneous finding that the applicant was knowingly married to more than one woman at the same time, that he had not disclosed part of his criminal record, and had ongoing problems with his family. Counsel states that the applicant was married to his first wife on September 10, 1983, and after having financial difficulties in the United States, the applicant's first wife returned to Nigeria in 1992 with their three children. Counsel asserts that due to separation from the applicant and having to raise her children alone, the applicant's wife had a nervous breakdown in Nigeria and falsely told the applicant that she had divorced him. Counsel states that afterwards the applicant had a relationship with [REDACTED] to whom he mistakenly believed he was free to marry. Counsel declares that the applicant and Ms. [REDACTED] married in 1994 and their relationship ended due to their alcohol abuse. Counsel states that in June 1998 the applicant's son was killed in an automobile accident and his daughter was critically injured and his family returned to the United States for his daughter's medical treatment in July 1998. Counsel asserts that the applicant's family moved in with the applicant in July 1998 and remained with him until the applicant and his first wife briefly separated in 2004 then reconciled in 2005. Counsel declares that when the applicant learned that he was not legally divorced from his first wife, he had the marriage to Ms. [REDACTED] annulled and remarried his first wife in April 2009.

Counsel contends that the director erred in finding that the applicant failed to disclose his complete criminal record. Counsel asserts that the applicant provided detailed information about his criminal history and certified docket sheets for the charges against him. Counsel declares that the only charges not shown in the adjustment application relate to traffic violations (nonpayment of a ticket) and civil matters. Counsel contends that the charges brought in 1998 for nonpayment of wages was not a criminal matter, that the charges had been dismissed, and were listed in the applicant's adjustment application, waiver application, and in the Commonwealth of Massachusetts Criminal History Systems Board summary. Counsel argues that the applicant was not required to disclose the ten-year-old civil restraining orders against him, that the application forms do not ask about restraining orders, and there was no question at the interview about restraining orders. Counsel declares that the restraining orders were filed against the applicant when the applicant's wife suffered from bipolar episodes, and that she supports her husband's adjustment application.

The AAO will first address the finding of inadmissibility.

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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The 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 applicant's convictions in Massachusetts are as follows:

<u>Date of Crime</u>	<u>Crime</u>	<u>Disposition</u>
May 20, 1985	Disorderly Person	
June 14, 1986	OUI, Leave Scene of Property Damage ¹	30 days loss of license
March 31, 1991	Operate Vehicle Negligently So As To Endanger, OUI	1-year sentence, serve 20 days jail
June 11, 1991	OUI, Operate Vehicle to Endanger Lives and Safety, Knowingly Receive Stolen Property, Refuse to Produce License	1-year sentence
June 26, 1993	Operate Vehicle to Endanger Lives and Safety, OUI	Convicted
August 19, 1993	Operate Vehicle to Endanger Lives and Safety	2 years, 30 days jail, sentence suspended, time served (30 days)
September 14, 1994	Assault and Battery	Continued without a finding

¹ "OUI" means Operating Under the Influence of Liquor.

		until October 26, 1995, sentenced to 90 days jail, and probation
January 10, 1995	Assault and Battery	Incarceration for 2 ½ years, batterer's counseling
February, 13, 1995	Assault and Battery By Dangerous Weapon (hammer) Violation of Protection Order	6 months jail
February 26, 1999	Nonpayment of Wages	Convicted
March 26, 2007	License suspended, operate motor Vehicle with c90 section 23	Probation

The director determined that the applicant's assault and battery convictions were crimes 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.

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

(h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in [her] discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the [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 established to the satisfaction of the [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...

(2) the [Secretary], in [her] discretion, and pursuant to such terms, conditions and procedures as [she] 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.

As previously stated, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed crimes involving moral turpitude. With regard to the waiver for inadmissibility under section 212(a)(2)(A)(i)(I), section 212(h)(1)(A) of the Act provides that the Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I) of subsection (a)(2) if 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. Since the convictions rendering the applicant inadmissible occurred in 1994-95, which is more than 15 years ago, they are waivable under section 212(h)(1)(A) of the Act.

Section 212(h)(1)(A)(ii) and (iii) of the Act requires that the applicant's admission to the United States not be contrary to the national welfare, safety, or security of the United States; and that the applicant establish his rehabilitation. Evidence in the record to establish the applicant's eligibility under section 212(h)(1)(A)(ii) and (iii) of the Act consists of letters commending his character. Mr. [REDACTED] states in his letter dated July 16, 2008, that he has known the applicant since August 2004 and holds him in high regard. Mr. [REDACTED] conveys in his letter dated January 31, 2008, that the applicant has had to overcome considerable adversity in his early years and that he is a hard-working man. Mr. [REDACTED] states in his letter dated February 8, 2008 that the applicant worked for him as a chef in 1992 and is reliable, trusted, and sincere. The applicant's wife describes her husband as kind, caring, and supportive in her hardship statement. In view of the record, which shows that the applicant has not committed any crimes since 1994-95; has worked as a chef and has owned a pub from February 2002 until July 2006; and is commended by his wife, solicitor, and friends, the AAO finds that the applicant has provided sufficient evidence to demonstrate that his admission to the United States is not contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated, as required by section 212(h)(1)(A)(ii) and (iii) of the Act.

However, assault and battery is a violent crime which may subject the applicant to the heightened discretion standard of 8 C.F.R. § 212.7(d). The regulation at 8 C.F.R. § 212.7(d) provides:

The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and

extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The AAO notes that the words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation, and the AAO is aware of no precedent decision or other authority containing a definition of these terms as used in 8 C.F.R. § 212.7(d). A similar phrase, "crime of violence," is found in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). Under that section, a crime of violence is an aggravated felony if the term of imprisonment is at least one year. As defined by 18 U.S.C. § 16, a crime of violence is an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. We note that the Attorney General declined to reference section 101(a)(43)(F) of the Act or 18 U.S.C. § 16, or the specific language thereof, in 8 C.F.R. § 212.7(d). Thus, we find that the statutory terms "violent or dangerous crimes" and "crime of violence" are not synonymous and the determination that a crime is a violent or dangerous crime under 8 C.F.R. § 212.7(d) is not dependent on it having been found to be a crime of violence under 18 U.S.C. § 16 or an aggravated felony under section 101(a)(43)(F) of the Act. *See* 67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Nevertheless, we will use the definition of a crime of violence found in 18 U.S.C. § 16 as guidance in determining whether a crime is a violent crime under 8 C.F.R. § 212.7(d), considering also other common meanings of the terms "violent" and "dangerous." The term "dangerous" is not defined specifically by 18 U.S.C. § 16 or any other relevant statutory provision. Thus, in general, we interpret the terms "violent" and "dangerous" in accordance with their plain or common meanings, and consistent with any rulings found in published precedent decisions addressing discretionary denials under the standard described in 8 C.F.R. § 212.7(d). Decisions to deny waiver applications on the basis of discretion under 8 C.F.R. § 212.7(d) are made on a factual "case-by-case basis." 67 Fed. Reg. at 78677-78.

The AAO finds that assault and battery is a violent crime. In the instant case, there are no national security or foreign policy considerations that would warrant a favorable exercise of discretion. We will therefore consider whether denial of admission would result in exceptional and extremely unusual hardship.

In *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001), the Board determined that exceptional and extremely unusual hardship in cancellation of removal cases under section 240A(b) of the Act is hardship that "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." However, the applicant need not show that hardship would be unconscionable. *Id.* at 61. The AAO notes that the exceptional and extremely unusual hardship standard in cancellation of removal cases is identical to the standard put forth by the Attorney General in *Matter of Jean*, *supra*, and codified at 8 C.F.R. § 212.7(d).

The Board stated that in assessing exceptional and extremely unusual hardship, it would be useful to view the factors considered in determining extreme hardship. *Id.* at 63. In *Matter of Cervantes*-

Gonzalez, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established the lower standard of extreme hardship. 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. 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 an exclusive list. *Id.*

We note that in *Monreal*, the Board provided additional examples of the hardship factors it deemed relevant for establishing exceptional and extremely unusual hardship:

[T]he ages, health, and circumstances of qualifying lawful permanent resident and United States citizen relatives. For example, an applicant who has elderly parents in this country who are solely dependent upon him for support might well have a strong case. Another strong applicant might have a qualifying child with very serious health issues, or compelling special needs in school. A lower standard of living or adverse country conditions in the country of return are factors to consider only insofar as they may affect a qualifying relative, but generally will be insufficient in themselves to support a finding of exceptional and extremely unusual hardship. As with extreme hardship, all hardship factors should be considered in the aggregate when assessing exceptional and extremely unusual hardship.

23 I&N Dec. at 63-4.

In the precedent decision issued the following year, *Matter of Andazola-Rivas*, the Board noted that, "the relative level of hardship a person might suffer cannot be considered entirely in a vacuum. It must necessarily be assessed, at least in part, by comparing it to the hardship others might face." 23 I&N Dec. 319, 323 (BIA 2002). The issue presented in *Andazola-Rivas* was whether the Immigration Judge correctly applied the exceptional and extremely unusual hardship standard in a cancellation of removal case when he concluded that such hardship to the respondent's minor children was demonstrated by evidence that they "would suffer hardship of an emotional, academic and financial nature," and would "face complete upheaval in their lives and hardship that could conceivably ruin their lives." *Id.* at 321 (internal quotations omitted). The Board viewed the evidence of hardship in the respondent's case and determined that the hardship presented by the respondent did not rise to the level of exceptional and extremely unusual. The Board noted:

While almost every case will present some particular hardship, the fact pattern presented here is, in fact, a common one, and the hardships the respondent has outlined are simply not substantially different from those that would normally be expected upon removal to a less developed country. Although the hardships presented here might have been adequate to meet the former "extreme hardship" standard for suspension of deportation, we find that they are not the types of hardship envisioned by Congress when it enacted the significantly higher "exceptional and extremely unusual hardship" standard.

23 I&N Dec. at 324.

However, the Board in *Matter of Gonzalez Recinas*, a precedent decision issued the same year as *Andazola-Rivas*, clarified that “the hardship standard is not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief.” 23 I&N Dec. 467, 470 (BIA 2002). The Board found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The Board noted that these factors included her heavy financial and familial burden, lack of support from her children’s father, her U.S. citizen children’s unfamiliarity with the Spanish language, lawful residence of her immediate family, and the concomitant lack of family in Mexico. 23 I&N Dec. at 472. The Board stated, “We consider this case to be on the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship standard will be met.” *Id.* at 470.

An analysis under *Monreal-Aguinaga* and *Andazola-Rivas* is appropriate. See *Gonzalez Recinas*, 23 I&N Dec. at 469 (“While any hardship case ultimately succeeds or fails on its own merits and on the particular facts presented, *Matter of Andazola* and *Matter of Monreal* are the starting points for any analysis of exceptional and extremely unusual hardship.”).

The applicant contended in the affidavit dated August 7, 2008 that he has a close relationship with his wife, whom he married in 1983 in Nigeria. He stated that in March 1992, his wife and children returned to Nigeria due to their financial difficulties, and while she was in Nigeria he met Ms. [REDACTED]. The applicant stated that he married Ms. [REDACTED] in October 1994, believing he was divorced from his first wife. He conveyed that he was arrested in January 1995 and convicted of assault and battery of Ms. [REDACTED]. The applicant stated that shortly after the automobile accident in 1998, he reunited with his first wife and daughters. The applicant described his employment history, community involvement, and counseling. As to his belief of divorce from his first wife, the applicant claimed that his mother-in-law told him that her daughter had a nervous breakdown and during the breakdown told the applicant they were divorced. The applicant stated that since he was still married to his first wife he had his marriage to Ms. [REDACTED] annulled on March 22, 2007, and remarried his first wife on April 21, 2009. The applicant contended that his daughters and his wife need his financial and emotional support and he will not be able to help them from Nigeria.

Dr. [REDACTED] stated in the letter dated June 3, 2009 that she began seeing members of the applicant’s family early in 2004, and they initially came for treatment because of an automobile accident that took place in 1998 in Nigeria. Dr. [REDACTED] described the years prior to and after the automobile accident that killed the applicant’s son and scarred his daughter’s face. Dr. [REDACTED] indicated that the applicant and his wife had separated for six years when their children were young, and the applicant’s wife lived in Nigeria with the children while the applicant lived in the United States. Dr. [REDACTED] stated that the applicant’s wife returned to the United States for medical treatment for her young daughter after the automobile accident. Dr. [REDACTED] stated that the applicant and his wife had marital difficulties and separated in 2004, then reconciled in 2005. Dr. [REDACTED] declared that they have a good marital relationship and their daughters are in college and working on their careers. Dr. [REDACTED] asserted that the applicant is active in the church and his wife is no longer depressed, and

if the applicant is forced to leave the United States, separation from him has the potential to destroy the family's progress.

As to the physical and mental health of the applicant's wife, Dr. [REDACTED] stated in the letter dated July 18, 2011 that the applicant's wife is being treated for metastatic bladder cancer and that the applicant is her primary care provider. Dr. [REDACTED] stated that the applicant's wife has been intermittently disabled by Bipolar I Manic Depressive Disorder with Hallucinations since 2003 and during these periods the applicant takes care of her and their two daughters. Dr. [REDACTED] stated in the letter dated October 14, 2009 that medications and treatments have helped the applicant's wife, but she continues to have breakthrough episodes. Dr. [REDACTED] conveyed that prompt medical interventions have enabled the applicant's wife to continue to work and function in society; however, it is unlikely that her treatments and medications are available in Nigeria.

The asserted hardship factors to the applicant's wife and two daughters in relocating to Nigeria are unavailability of suitable medical care for the applicant's wife; jeopardy to their personal safety; enduring gender, religious, and societal discrimination; and not being able to obtain a job. Dr. [REDACTED] asserted that the medication and treatments required for the applicant's wife's bi-polar manic depressive disorder are not likely to be available in Nigeria. The applicant's wife was undergoing treatment for metastatic bladder cancer in July 2011. The U.S. Department of State stated that medical facilities in Nigeria are in poor condition, diagnostic and treatment equipment is poorly maintained, and many medicines are unavailable. U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information – 2012: Nigeria* (July 16, 2012). In light of the applicant's wife's serious mental and physical health problems and the unavailability of suitable medical care, combined with having to live in a climate of political and social strife, as shown in the submitted U.S. Department of State Travel Warning and the articles from the Christian Science Monitor, the applicant has established exceptional and extremely unusual hardship to his wife.

The asserted hardships to the applicant's wife and daughters in remaining in the United States without the applicant are separation from the applicant, concern about the applicant's physical safety in Nigeria, and not being able to survive in the United States without his income. The applicant's wife contends that they will struggle financially without her husband's income. However, this has not been established by the record, for it shows that she owns the house, is employed as a preschool teacher earning \$17.41 per hour, and has a college graduate daughter living with her. No evidence has been provided that the applicant's daughter in medical school requires financial assistance from her father. Moreover, the applicant's wife has not provided documentation of her household expenses and shown that her income is not enough for her expenses as well as for providing some financial assistance to her husband while he seeks a job in Nigeria. Counsel claims that the applicant's wife requires the applicant to drive her to work, but has not shown that she has no alternative means of transportation. We also consider in the hardship analysis the emotional impact of the applicant's departure from this country on his qualifying relatives. The submitted letters from wife and daughters and the letter from Dr. [REDACTED] attest to the close relationship they have with the applicant. The applicant's wife asserted in her declaration dated March 31, 2009 that she was depressed for many years while she was separated from the applicant. The applicant's wife and daughters are concerned about his welfare and physical safety in Nigeria. The submitted travel warning from the U.S. Department of State described risks to U.S. citizens in travel to Nigeria and to avoid travel to the Niger Delta states. U.S. Department of State, Bureau of Consular Affairs, *Travel*

Warning – Nigeria, 1 (October 19, 2010). The article from the Christian Science Monitor dated June 27, 2011 described violence blamed on the Islamist group Boko Haram. The Christian Science Monitor article dated June 27, 2011 stated that Boko Haram rejected an amnesty offer. Counsel states that the applicant's wife has family members in Nigeria. It is possible they will be able to provide the applicant, who is an accountant with a bachelor's degree, with a safe place to live and connections for employment. Furthermore, the record suggests that the applicant is not from the lower socio-economic class in Nigeria, as he provided \$16,700 in personal funds in 1986 to attend

We acknowledge that the applicant's wife has bi-polar disorder and began treatment for metastatic bladder cancer in July 18, 2011, and her doctors have stated that the applicant has been his wife's care provider. However, the record also reflects that the applicant's wife has an adult daughter who lives with her. The applicant has not addressed the possibility that his daughter, with whom his wife has a strong bond, will be able to assist her mother. When we consider the asserted hardship factors in the aggregate, we find that they do not support a finding of exceptional and extremely unusual hardship.

While the applicant's wife may experience exceptional and extremely unusual hardship if she relocated to Nigeria, he has not demonstrated exceptional and extremely unusual hardship if she remained in the United States while he lived in Nigeria. As a consequence, we do not find, as a matter of discretion, that the applicant has established exceptional and extremely unusual hardship, or extraordinary circumstances to warrant a favorable exercise of discretion under section 212(h) of the Act.

As to counsel's assertions that the applicant fully disclosed his criminal record regarding the nonpayment of wages, that the applicant believed that he could legally marry Ms. [REDACTED] and was not required to disclose the restraining orders, upon review of the record, it appears that the applicant had provided a complete record of his criminal history through the Commonwealth of Massachusetts Criminal History Systems Board information and his certified docket sheets. The applicant was not required to disclose the restraining orders for they are not criminal convictions. Nonpayment of wages is regarded as a crime in Massachusetts. *See* Mass. Gen. Laws Ann. ch. 149, § 27C. The record of conviction does not provide the reason for the dismissal of the applicant's nonpayment of wages conviction. We agree with the director that it would have been reasonable for the applicant to have ensured that his marriage to his first wife, which took place in Nigeria, was legally terminated before he married Ms. [REDACTED]. However, we do not find that this should be given significant negative weight.

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.