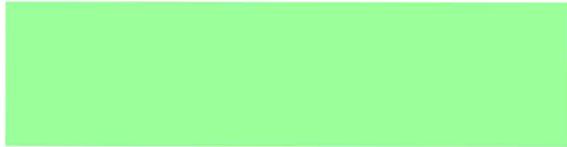


(b)(6)

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



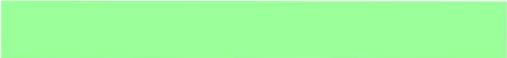
U.S. Citizenship
and Immigration
Services



DATE: JUL 31 2013

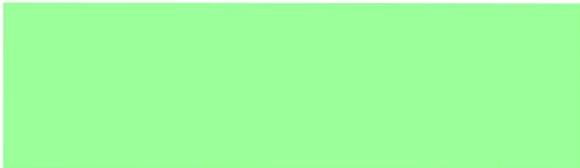
Office: BALTIMORE, MD

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IN RE: 

APPLICATIONS: Application for Waiver of Grounds of Inadmissibility under sections 212(h) and (i) of the Immigration and Nationality Act (the Act), 8 U.S.C. §§ 1182(h) and (i)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

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

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Baltimore, Maryland, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States 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, and section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), for obtaining admission to the United States through fraud or willful misrepresentation of a material fact. He is the beneficiary of an approved Petition for Alien Relative (Form I-130) submitted by his wife, a U.S. Citizen. He seeks a waiver of inadmissibility in order to remain in the United States with his wife.

The district director concluded the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and, accordingly, denied the Application for Waiver of Grounds of Inadmissibility (Form I-601). *Decision of District Director*, dated December 27, 2012.

On appeal, counsel for the applicant contends that the district director erred in finding that the qualifying spouse would not suffer extreme hardship if the waiver application were denied.

The record includes, but is not limited to: a statement from the qualifying spouse; medical and employment records relating to the qualifying spouse; financial documentation; a letter from a social worker; documentation relating to the applicant's criminal conviction and his entry into the United States; and country conditions information. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2) of the Act states, in pertinent part:

Criminal and related grounds. —

(A) Conviction of certain crimes. —

- (i) In general. — Except as provided in clause (ii), any 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 on June 5, 2000, the applicant was convicted of receiving stolen property in the third degree, in violation of N.J. Stat. 2C:20-7A. He was sentenced to one year of probation, received credit for 12 days spent in custody, and was ordered to pay a \$1,000 fine.

The applicant's case arises within the Fourth Circuit Court of Appeals, which has reaffirmed the traditional categorical approach for determining whether a crime involves moral turpitude, declining to follow the "administrative framework" set forth by the Attorney General in *Matter of Silva-Trevino*, 24 I&N Dec. 24 I&N Dec. 687 (A.G. 2008). See *Prudencio v. Holder*, 669 F.3d 472, 476 (4th Cir. 2012) ("Because we conclude that the moral turpitude provisions of the INA are not ambiguous and do not contain any gap requiring agency clarification, we hold that the procedural framework established in *Silva-Trevino* was not an authorized exercise of the Attorney General's authority") In *Prudencio*, the Fourth Circuit found that "the moral turpitude statute . . . explicitly directs that apart from certain types of admissions made by a defendant at his criminal proceedings, an adjudicator applying the moral turpitude statute may consider only the alien's prior conviction and not the conduct underlying that conviction." 669 F.3d at 484. The court noted that the categorical approach involves "examin[ing] the statutory elements of the crime, and not consider[ing] the facts or conduct of the particular violation at issue." *Id.* The court further indicated that the modified categorical approach is restricted to a review of the record of conviction

to determine whether the crime of which [an alien] was convicted qualifies as a crime involving moral turpitude. . . . In cases . . . in which the conviction at issue was based on a guilty plea, the record of conviction is composed of the charging document, the plea agreement, the plea colloquy, and any explicit findings of fact made by the trial judge.

Id. at 485. Accordingly, the AAO will consider the applicant's conviction pursuant to the analytical framework outlined by the Fourth Circuit in *Prudencio*.

The statute under which the applicant was convicted, N.J. Stat. § 2C:20-7a, provides in pertinent part:

A person is guilty of theft if he knowingly receives or brings into this State movable property of another knowing that it has been stolen, or believing that it is probably stolen. It is an affirmative defense that the property was received with purpose to restore it to the owner.

In determining whether theft is a crime of moral turpitude, the Board considers “whether there was an intention to permanently deprive the owner of his property.” See *Matter of Jurado-Delgado*, 24 I&N Dec. 29, 33 (BIA 2006); *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973). The Board has also held that “[t]he crime of receiving stolen property involves moral turpitude, if knowledge that the goods were stolen is an element of the offense.” *Matter of Patel*, 15 I&N Dec. 212 (BIA 1975) (citing *Matter of R--*, 6 I&N Dec. 772 (BIA 1955); *Matter of Z--*, 7 I&N Dec. 253 (BIA 1956)); see also *Matter of Salvail*, 17 I&N Dec. 19, 20 (BIA 1979).

The Second Circuit Court of Appeals has held that a conviction under N.J. Stat. § 2C:20-7 is a crime involving moral turpitude. In particular, the court has noted that although the statute “permits a conviction not only if one knowingly receives property one knows to be stolen, but also if one knowingly receives property that one ‘believ[es] . . . is probably stolen,’” the distinction between the two states of mind is “meaningless.” *Alcaide-Zelaya v. INS*, 231 F. App’x 24, 25 (2d Cir. 2007). Noting a similar finding in the Third Circuit, the court further explained that “[b]oth crimes speak with equal force to the honesty of a person. If knowingly possessing stolen goods is a crime of moral turpitude, it follows that possessing stolen goods that one believes probably are stolen is such a crime, too.” *Id.* (quoting *De Leon-Reynoso v. Ashcroft*, 293 F.3d 633, 637 (3d Cir. 2002)).

N.J. Stat. § 2C:20-3a provides a definition of theft, noting that “[a] person is guilty of theft if he unlawfully takes, or exercises unlawful control over, movable property of another with purpose to deprive him thereof.” Additionally, N.J. Stat. § 2C:20-1a defines the term “deprive” to include withholding property of another permanently or for an extended period so “as to appropriate a substantial portion of its economic value” or “to dispose or cause disposal of the property so as to make it unlikely that the owner will recover it.” In light of the definition of “deprive” and the fact that the affirmative statutory defense to the crime of receiving stolen property is “that the property was received with purpose to restore it to the owner,” the AAO finds that a conviction under N.J. Stat. § 2C:20-7a requires an intention to permanently deprive an owner of his property. Thus, the applicant’s conviction under N.J. Stat. § 2C:20-7a is categorically a crime involving moral turpitude which renders him inadmissible under section 212(a)(2)(A)(i)(I) of the Act. The applicant does not contest the finding of inadmissibility on appeal.

The applicant has also been found to be inadmissible under section 212(a)(6)(C) of the Act, which provides, in pertinent part:

(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.

Section 212(i) of the Act provides:

- (1) The [Secretary] may, in the discretion of the [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 [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.

The record reflects that on July 8, 1997, the applicant entered the United States by presenting a fraudulent passport and visitor's visa. He admits to having used fraudulent documents and a false name to enter the United States. Therefore, the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for having procured admission to this country through fraud or misrepresentation. He does not contest this finding of inadmissibility on appeal.

The applicant is eligible to apply for a waiver of inadmissibility under sections 212(h) and (i) of the Act as the spouse of a U.S. citizen.

Section 212(h) states, in pertinent part:

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

...

- (B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

Section 212(i) of the Act provides:

- (2) The [Secretary] may, in the discretion of the [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 [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 under section 212(h) or (i) is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse, parent, son, or daughter of the applicant. The applicant's U.S. citizen spouse is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (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 U.S. 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 v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (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 qualifying spouse states that she would suffer extreme hardship if the applicant were removed because she “depend[s] on him completely.” She notes that she has asthma, allergies, and seizures, and that she had a bilateral hip replacement due to medication she takes for her asthma. Therefore, she asserts that the applicant does all of the cooking, cleaning, laundry, and grocery shopping and that he bathes her when she is too sick to bathe herself. She also contends that “sometimes [she] cough[s] so hard that [she] lose[s] consciousness and fall[s],” so the applicant must monitor her closely and cannot leave her alone for long periods of time. She also notes that she cannot drive due to her seizure disorder, so she depends on the applicant for transportation to doctor’s appointments and to the emergency room. The qualifying spouse states that she cannot travel alone and that when she has traveled without the applicant, her sister and niece have accompanied her.

Additionally, the qualifying spouse explains that she has “a strong emotional dependence” on the applicant because he treats her well, cares for her when she is ill, and attends church with her. She asserts that in 2007, when the applicant went out of town for a couple of months, she attempted suicide due to her fear that she would not see the applicant again.

The qualifying spouse notes that she is employed as a Grants Management Specialist at the [REDACTED] but that her medical conditions sometimes make it difficult for her to work. She states that she teleworks two days per week and is also permitted to telework during bad weather or when she is not feeling well. Additionally, she relies on Metro

Access, a transportation service for people with disabilities, to get to work. She asserts that despite the difficulties, she feels she must continue to work because her income is the only source of financial support for her and the applicant.

Finally, the qualifying spouse contends that she would experience extreme hardship if she were to relocate to Nigeria. She believes that she would be unable to obtain necessary medical care for her asthma and seizures in Nigeria. Additionally, she fears being subjected to female circumcision in that country.

The AAO finds that the qualifying spouse would experience extreme hardship if separated from the applicant. The record contains voluminous medical records demonstrating that the qualifying spouse suffers from serious health issues, including but not necessarily limited to: depression with hallucinations; a seizure disorder; fibromyalgia; severe asthma which has been difficult to control; arthritis; obesity; allergies; chronic pain in the back, knees, and shoulders; sleep apnea; fatigue; rashes; heart burn; headaches; and an ongoing cough so severe that it sometimes results in vomiting, fainting, falling, or incontinence. The records show that she has been receiving regular, ongoing medical care for her health issues since at least 2005 and continues to do so. She takes several prescription medications and relies on a CPAP machine for assistance breathing at night. She has suffered seizures at work and has had to take extended absences from work due to her physical and mental health problems. Additionally, her asthma medication, prednisone, is a steroid which resulted in her need for a bilateral hip replacement. The medical records also indicate that she was hospitalized in November 2007 for major depression.

In a letter, one of the qualifying spouse's doctors states:

Due to these issues, she requires a fair amount of assistance from her husband. He does the cooking and cleaning in the house, he helps her manage her medications and disperses them for her and he drives her to appointments as she cannot drive to due her seizure disorder. She relies on her husband's care and would have a difficult time functioning without him helping her.

Letter from [REDACTED] MD, dated January 9, 2013. A licensed social worker also confirms that the applicant "experiences serious health problems that force her to completely rely on her husband for emotional and physical support way beyond the norm."

Letter from [REDACTED] LCSW-C, dated April 28, 2010. The social worker notes that the applicant "has been able to relieve [the qualifying spouse] of the burdens and requirements of maintaining her living environment" by cooking, cleaning, and doing chores she "is unable to accomplish due to her physical limitations." *Id.* Furthermore, the social worker states that the qualifying spouse has "extraordinary emotional needs" due to her poor health and "is in a fragile state." *Id.*

The record establishes that the qualifying spouse is disabled. The Maryland Motor Vehicle Administration has issued her a disability parking placard and she has submitted a Metro Access

identification card. Employment records also demonstrate that the qualifying spouse has obtained permission to work from home two days per week, as well as on an “ad hoc/situational” basis. *NIAAA Telework Application and Agreement*. The AAO finds that the evidence of record establishes that the qualifying spouse suffers from serious medical issues which affect her daily life and limit her ability to work and care for herself. She benefits from the assistance of the applicant and would suffer extreme hardship if he were not present in the United States to provide her with emotional and physical support and care.

The AAO also finds that the qualifying spouse would face extreme hardship if she were to relocate to Nigeria with the applicant. The qualifying spouse is originally from Barbados, so she is unfamiliar with the lifestyle and culture of Nigeria. Additionally, she has been a naturalized U.S. citizen for nearly 15 years, since September 1998, and she has personal and professional ties in this country, so adjustment to life abroad would likely be very difficult for her. Also, the qualifying spouse has long-established relationships with a team of doctors who provide her with regular treatment for her serious medical issues, and she relies on several prescription medications to manage her health. The U.S. Department of State reports that “medical facilities in Nigeria are in poor condition Diagnostic and treatment equipment is often poorly maintained, and many medicines are unavailable.” *U.S. Department of State, Country Specific Information: Nigeria*, dated March 22, 2013. The qualifying spouse may be unable to receive necessary medical treatment in Nigeria. Furthermore, the record indicates that the applicant is from the city of Zaria, in the Nigerian state of Kaduna. The U.S. Department of State warns that U.S. citizens should avoid all non-essential travel to Kaduna and at least 20 other states. *U.S. Department of State, Travel Warning: Nigeria*, dated June 3, 2013. The Department of State notes that kidnappings, suicide bombings, and attacks by extremist groups are common in the states for which it has issued warnings. *Id.*

In the aggregate, the AAO finds that the difficulties the qualifying spouse would face if the waiver application were denied would amount to extreme hardship. *See Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996); *see also Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 566 (BIA 1999).

In that the applicant has established that the bars to his admission would result in extreme hardship to a qualifying relative, the AAO now turns to a consideration of whether the applicant merits a waiver of inadmissibility as a matter of discretion. In discretionary matters, the applicant 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 . . . 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).

Matter of Mendez, 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 unfavorable factors in this case are the applicant's conviction for a crime involving moral turpitude and his use of fraudulent documents to obtain admission to the United States. A favorable factor is the extreme hardship the qualifying spouse would suffer if the applicant were removed. Additionally, his criminal conviction occurred in 2000, over 13 years ago, and there is no evidence that he has been involved in criminal activity since that date. Also, the applicant has been residing in the United States since 1997.

Although the applicant's criminal conviction and his violation of immigration law cannot be condoned, the positive factors in this case outweigh the negative factors. In these proceedings, the burden of establishing eligibility for the waiver rests entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met his burden and the appeal will be sustained.

ORDER: The appeal is sustained.