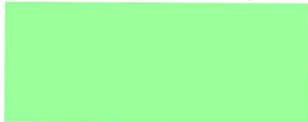


(b)(6)

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

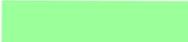


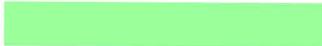
U.S. Citizenship  
and Immigration  
Services



DATE: OCT 01 2013

OFFICE: CINCINNATI

FILE: 

IN RE: 

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

ON BEHALF OF APPLICANT:

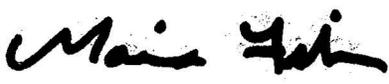


INSTRUCTIONS:

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. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

  
for

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Cincinnati, Ohio denied the waiver application and the matter 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 to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure entry to the United States by fraud or willful misrepresentation. The applicant was also found to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having committed a crime involving moral turpitude. The applicant seeks a waiver of inadmissibility in order to reside in the United States with his U.S. citizen spouse and children.

The Field Office Director concluded that the record failed to establish the existence of extreme hardship for a qualifying relative and denied the application accordingly.<sup>1</sup> See *Decision of the Field Office Director*, dated September 29, 2011.

On appeal, counsel for the applicant asserts that the hardship suffered by a qualifying relative upon denial of the applicant's waiver would extend beyond the typical.

In support of the waiver application and appeal, the applicant submitted background information concerning separation, letters of support, financial documentation, identity documents, medical documentation concerning the applicant's spouse, a letter from the applicant's spouse, and family photographs. 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.

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

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<sup>1</sup> It is noted that the Field Office Director also found the applicant to be inadmissible to the United States pursuant to section 212(a)(8)(A) of the Act, as an immigrant who is permanently ineligible for citizenship, for which there is no waiver available. The Field Office Director determined that the applicant would be barred from demonstrating Good moral character for citizenship purposes due to his conviction for an aggravated felony after November 19, 1990. However, the Board of Immigration Appeals, in *Matter of Kanga*, 22 I&N Dec. 1206 (BIA 2000), found that immigrants convicted of aggravated felonies are not inadmissible pursuant to section 212(a)(8)(A) of the Act, a section that only applies to the ineligibility for citizenship due to evasion of military service. As such, the applicant is eligible to apply for a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act.

(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 –

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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 is established to the satisfaction of the Attorney General [Secretary] that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . .

The 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 applicant was convicted of false use of a passport, pursuant to section 18 U.S.C. § 1543, on September 26, 1997. The applicant was sentenced to one year imprisonment. The field office director found the applicant to be inadmissible for having been convicted of crimes involving moral turpitude. The applicant has not disputed this determination on appeal. As the applicant has not disputed inadmissibility on appeal and the record does not show the field office director’s finding of inadmissibility to be erroneous, the AAO will not disturb the field office director’s inadmissibility finding.

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

immigrant 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...

The applicant attempted to enter the United States pursuant to the Visa Waiver Program on March 29, 1997, by presenting a photo-substituted passport belonging to another individual. The applicant was therefore found inadmissible under section 212(a)(6)(C)(i) of the Act for attempting to procure admission to the United States through fraud or misrepresentation. The applicant does not dispute this finding of inadmissibility on appeal.

As the applicant's waiver application under section 212(i) of the Act is the more restrictive of the waivers for which he is applying, his appeal will be adjudicated in accordance with this section. A section 212(i) waiver of the bar to admission resulting from section 212(a)(6)(C) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse or parent. Hardship to the applicant is not considered in section 212(i) waiver proceedings unless it causes hardship to a qualifying relative, in this case the applicant's spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 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 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.

In the present case, the record reflects that the applicant is a 52-year-old native and citizen of Nigeria. The applicant’s spouse is a 52-year-old native of Nigeria and citizen of the United States. The applicant is currently residing with his spouse and child in [REDACTED] Ohio.

The applicant’s spouse asserts that it would cause extreme emotional hardship and devastation to be separated from the applicant. The applicant’s spouse contends that having a child was one of the most important things to her and that she would not be able to conceive without the applicant. It is noted that the applicant’s spouse gave birth to a child subsequent to her submitted statement, on May 14, 2012. The applicant’s spouse also asserts that the applicant does not work at nights because the applicant’s spouse is unable to sleep without the applicant by her side.

The applicant’s spouse contends that if the applicant returns to Nigeria, he could be incarcerated or killed based upon his political beliefs. The applicant’s spouse asserts that she knew people who have been killed because of political opposition in Nigeria and that she is afraid of that happening

to the applicant upon his return. It is noted that the applicant, on October 5, 1998, was granted withholding of removal, pursuant to section 241(b)(3) of the Act, to Nigeria or to any third country that would return the applicant to Nigeria. The immigration judge found that the applicant had presented credible evidence of past persecution in Nigeria based upon his political beliefs, establishing a presumption of future persecution absent evidence that the applicant would not, more likely than not, face such persecution. The immigration judge noted that Nigeria was a troubled nation and it would be speculation to assert any confidence in the outcome of the country's situation. It is noted that the most recent 2012 U.S. Department of State Country Report for Nigeria states that despite the most recent change in regime, the government or its agents committed numerous arbitrary or unlawful killings and used lethal and excessive force to apprehend individuals or disperse protesters. There is sufficient evidence in the record, in the aggregate, to find that the applicant's spouse would suffer extreme hardship upon separation from the applicant.

The applicant's spouse asserts that she cannot relocate to the Nigeria to reside with the applicant because it would be extremely difficult for her to adjust and she would be persecuted as a minority Christian. It is noted that the applicant's spouse is a native of Nigeria who asserts that she left that country in 1986. It is also noted that the record contains a letter from the applicant's pastor, since 2006, stating that the applicant is a committed Christian who is active in church. The record does not contain such supporting documentation concerning the applicant's spouse's religious beliefs. The record does reflect that the applicant's spouse is currently employed as a nurse in the United States.

Counsel for the applicant asserts that harm to the applicant in Nigeria would impact the lives of both his spouse and his child, whether they are separated from the applicant or relocate to Nigeria. As noted, an immigration judge previously granted the applicant withholding of removal relief, finding that the applicant had established a presumption of future persecution in Nigeria. It is also noted that in the applicant's asylum hearing, the applicant testified that he was told that his previous wife was tortured and killed when she would not disclose his whereabouts. The immigration judge stated that the applicant's testimony in his asylum hearing appeared credible, persuasive, and direct. In this case, the AAO concurs that the record contains sufficient evidence to show that the hardships faced by the applicant's spouse, in the aggregate, would rise to the level of extreme hardship if she relocated to Nigeria.

Considered in the aggregate, the applicant has established that his spouse would face extreme hardship if his waiver request is denied. Extreme hardship is a requirement for eligibility, but once established it is but one favorable discretionary factor to be considered. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). For waivers of inadmissibility, the burden is on the applicant to establish that a grant of a waiver of inadmissibility is warranted in the exercise of discretion. *Id.* at 299. The adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on her behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Id.* at 300.

However, as a matter of discretion, the applicant does not merit a grant of this waiver. The negative discretionary factors against this applicant include his immigration violations, including an attempt to enter the United States on March 29, 1997 with a photo-substituted passport belonging to another individual. The applicant presented a passport belonging to a citizen of the Netherlands in order to enter the United States pursuant to the Visa Waiver Program. The applicant signed a sworn statement on the same date, stating that he came to the United States for a visit, for a period of two weeks. The applicant was convicted of false use of a passport based upon these actions, in federal court, pursuant to 18 U.S.C. § 1534.

The record also reflects that the applicant accrued further criminal contacts during his residence in Germany, resulting in charges, between 1992 and 1996, of forgery, fraud, and causing another to make a false official entry under aggravating circumstances. The applicant, similar to his March 29, 1997 crime in the United States, is alleged to have presented multiple differing identities, including [REDACTED] at the time of arrest. The record also reflects that Germany had requested the extradition of the applicant based upon his pending charges.

Prior to the applicant's grant of withholding of removal on October 5, 1998, his removal to Germany was attempted on several occasions. It is noted that the applicant was unable to be removed based upon threatening gestures made toward other passengers and a threat that he would blow up the plane. It is also noted that the applicant asserts that he argued against return to Germany because of a fear that he would be subsequently returned to Nigeria.

The favorable discretionary factors for this applicant are the extreme hardship the applicant's spouse would experience whether she remained in the United States, separated from the applicant, or accompanied the applicant in Nigeria, and the letters of support submitted on the applicant's behalf.

The immigration and criminal violations committed by the applicant are serious in nature and cannot be condoned. As such, the AAO finds that the applicant has not established that the favorable factors in his application outweigh the unfavorable factors. Therefore, a favorable exercise of the Secretary's discretion is not warranted.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.