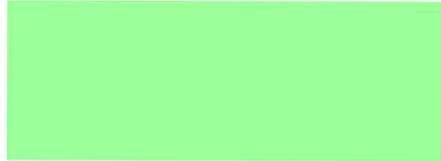


(b)(6)

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

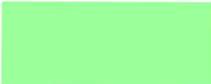


U.S. Citizenship  
and Immigration  
Services

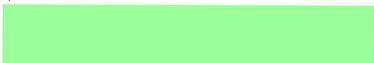


Date: **JUN 09 2014**

Office: ATLANTA FIELD OFFICE

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 (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,

  
f.s.

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Atlanta, Georgia, 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 inadmissible under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for having attempted to procure entry into the United States by fraud or willful misrepresentation. 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 determined that the facts presented by the applicant on the Application for Waiver of Grounds of Inadmissibility (Form I-601) do not support the description of the waiver sought, therefore the applicant had not met the burden of establishing eligibility and denied USCIS a line of questioning in determining his eligibility for a waiver. The application was denied accordingly. *See Decision of the Field Office Director* dated July 10, 2013.

On appeal counsel for the applicant contends in the Notice of Appeal (Form I-290B) that the field office director erred in finding that the applicant had not met his burden of establishing eligibility for a waiver of inadmissibility. Counsel further states that the field office director erred in finding that the applicant failed to provide sufficient information on what made him inadmissible and denied USCIS a “line of question.” With the appeal counsel submits a brief, affidavits from the applicant and his spouse, letters of support from the applicant’s children and members of the community, medical documentation, court dispositions, and country information for Nigeria. The record also contains evidence submitted in conjunction with the Application to Adjust Status (Form I-485). The entire record was reviewed and considered in rendering a decision on the appeal.

The AAO conducts appellate review on a de novo basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004)

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.

The principal elements of a misrepresentation that renders an alien inadmissible under section 212(a)(6)(C)(i) of the Act are willfulness and materiality. In *Matter of S- and B-C*, 9 I&N Dec 436 (BIA 1960 AG 1961), the Attorney General established the following test to determine whether a misrepresentation is material:

A misrepresentation . . . is material if either (1) the alien is excludable on the true facts, or (2) the misrepresentation tends to shut off a line of inquiry which is relevant to the alien’s eligibility and which might well have resulted in a proper determination that he be excluded. *Id.* at 447.

The Supreme Court has addressed the issue of material misrepresentations in its decision in *Kungys v. United States*, 485 U.S. 759 (1988). In that case, which involved misrepresentations made in the context of naturalization proceedings, the Supreme Court held that the applicant's misrepresentations were material if either the applicant was ineligible on the true facts, or if the misrepresentations had a natural tendency to influence the decision of the Immigration and Naturalization Service. *Id.* at 771.

In the present case the field office director found that by providing insufficient information on what made him inadmissible, the applicant denied USCIS a line of questioning in determining his eligibility for a waiver based on the acts and convictions that he stated made him inadmissible. On appeal counsel asserts that the applicant clearly indicated which ground he believed made him inadmissible and described why he so believed. The record reflects that on Form I-601 the applicant indicated that he is inadmissible for a crime involving moral turpitude and stated that he had been convicted for using a false name. In response to a Request for Evidence related to the I-485 application the applicant's former counsel had submitted court dispositions related to all of his arrests, including his conviction records for grand theft and giving a false name. The record does not support that the applicant misrepresented any information or in any way hindered a line of questioning related to his eligibility for a benefit sought. Thus, the record does not support that the applicant is inadmissible under section 212(a)(6)(C)(i).

The record does show, however, that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude.

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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential

elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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.)

The record reflects that on February 13, 1986, the applicant pled guilty in Florida to Grand Theft under Florida Statute § 812.014, and was sentenced to three years' probation and a \$200 fine. Fl. Stat. § 812.014 provides in pertinent parts:

- (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:
  - (a) Deprive the other person of a right to the property or a benefit from the property.
  - (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

In the instant case, the statute under which the applicant was convicted involves both temporary and permanent takings. A plain reading of Fl. Stat. § 812.014 shows that it can be violated by knowingly obtaining or using the property of another with intent to, either temporarily or permanently, deprive an individual of his or her property or appropriate the property to his or her own use. The BIA has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person's property. *See Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) ("Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended."). Therefore, the AAO cannot find that a violation of Fl. Stat. § 812.014 is categorically a crime involving moral turpitude.

Since the full range of conduct proscribed by the statute at hand does not constitute a crime involving moral turpitude, we will apply the modified categorical approach. Charges filed by the state attorney for Seventeenth Judicial Circuit of Florida indicate that on September 30, 1985, the applicant unlawfully and knowingly obtained furniture from a retail store with a value of more than \$100 with the intent to deprive the store permanently or temporarily of the property. In *Matter of Jurado*, 24 I&N Dec. 29, 33-34 (BIA 2006), the Board of Immigration Appeals found that violation of a Pennsylvania retail theft statute involved moral turpitude because the nature of retail theft is such that it is reasonable to assume such an offense would be committed with the intention of retaining merchandise permanently. The charging document in the applicant's case reflects that his act of theft involved retail theft and therefore supports a finding that he committed theft with the intent to permanently deprive the owner of the property. Therefore, the record in the present case shows that the applicant was convicted of a crime involving moral turpitude.

The record also reflects that on March 16, 2001, the applicant was convicted in Georgia on three counts of Giving False Name. The applicant was sentenced to 12 months confinement, concurrent for each count, fined \$1,000, and given 12 months' probation. Under the O.C.G.A., Crimes and Offenses - Title 16, Section 16-10-25:

Giving false name, address, or birthdate to law enforcement officer:

A person who gives a false name, address, or date of birth to a law enforcement officer in the lawful discharge of his official duties with the intent of misleading the officer as to his identity or birthdate is guilty of a misdemeanor.

The BIA has concluded that false statements made to mislead a government official performing his official functions need not be material to constitute a crime involving moral turpitude. See *Matter of Jurado*, 24 I&N Dec. 29, 34 (BIA 2006). The United States Court of Appeals for the Eleventh Circuit has also found that crimes of dishonesty or false statement are considered generally to involve moral turpitude. See *Itani v. Ashcroft*, 298 F.3d 1213, 1215 (11th Cir. 2002).

Thus the record supports that the applicant is inadmissible for having been convicted of crimes involving moral turpitude. On appeal counsel states that the applicant would be inadmissible for his grand theft conviction and his conviction for false statements and therefore seeks a waiver of inadmissibility under section 212(h) of the Act in order for the applicant to reside in the United States with his U.S. citizen spouse and children.

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—

...

(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.

A waiver of inadmissibility under section 212(h) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant. The applicant's U.S. citizen spouse and children are the qualifying relatives in this case. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Moralez*, 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 v. I.N.S.*, 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.

A letter from the spouse’s physician confirms that the applicant’s spouse is HIV positive, and counsel asserts that resulting medical issues make the spouse emotionally and financially dependent on the applicant. Counsel contends that the spouse is in a fragile state and needs constant support for her health problems. Counsel asserts that as the spouse’s children do not know she is HIV positive or that the applicant has AIDS, the spouse would have no one in whom to confide without the applicant. Counsel also asserts that the spouse is unable to work due to her physical condition. The applicant’s spouse states that she learned in 2004 that she contracted HIV from the applicant and that she takes medication to control her condition and sees her doctor every four months. The spouse states that she has much to worry about and that the applicant helps her deal with everything. She states that gall bladder issues and difficulty sleeping have arisen and prevent her from working, so the applicant pays all the expenses, including medical bills, rent, and food, and provides for the family. The spouse further states that she is in school for business management and hopes to work again one day.

The record fails to establish that the applicant’s spouse will suffer extreme hardship as a consequence of being separated from the applicant. Counsel asserts that the spouse is emotionally dependent on the applicant and the spouse states that the applicant helps her deal with everything, but they failed to provide any detail or supporting evidence explaining the exact nature of the

spouse's emotional hardships, how such emotional hardships are outside the ordinary consequences of removal, or how other family members including the spouse's adult children are unable to assist her. The assertions made by counsel and the spouse have been considered but going on record without supporting documentary evidence generally is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The letter from the spouse's physician, although confirming the spouse is HIV positive, does not detail any treatment, prognosis or additional medical consequences for the spouse that would require the applicant's physical presence in the United States, and the record contains no documentation of the related health issues that the spouse states she now experiences and for which she needs the applicant's assistance.

Counsel also indicates that the applicant's spouse is financially dependent on the applicant and the spouse states that the applicant pays all her expenses. However, no documentation has been submitted to the record establishing the spouse's current expenses, assets, and liabilities, or her overall financial situation to establish that without the applicant's physical presence in the United States the spouse will experience financial hardship.

Letters from the applicant's adult children describe their close relationships with him, but do not address any anticipated hardship due to separation from the applicant.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives upon separation from the applicant, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship.

The record does establish, however, that the applicant's spouse would experience extreme hardship if she were to relocate abroad to reside with the applicant due to his inadmissibility. Counsel cites U.S. Department of State reports of Nigeria being unsafe, and counsel asserts that it is not safe for a woman of the spouse's age with HIV because health facilities are poor. The applicant's spouse states that she has never been outside of the United States and has a large immediate and extended family here. She states that she worries about medical treatment in Nigeria, including fearing fake drugs, and further states that if she were to relocate to Nigeria no one would care for her children.

According to the U.S. Department of State, the security situation in Nigeria remains unpredictable and U.S. citizens have experienced armed muggings, assaults, burglaries, armed robberies, car-jackings, rapes, kidnappings, and extortion while law enforcement authorities respond slowly or not at all and provide little or no investigative support to victims. See Travel Warning-U.S. Department of State, dated May 6, 2014.

The Department of State also reports that although Nigeria has a number of well-trained doctors, medical facilities are in poor condition with inadequately trained nursing staff, poorly maintained diagnostic and treatment equipment, and many medicines unavailable. It recommends caution when purchasing medicines locally as counterfeit pharmaceuticals are a common problem and that HIV/AIDS is a potentially fatal virus that is the leading cause of death in Nigeria.

<http://travel.state.gov> February 3, 2014.

The record establishes that the applicant's U.S. citizen spouse was born in the United States and has no ties to Nigeria. To relocate to Nigeria she would have to leave her family, most notably her children, and she would be concerned about her physical safety as well as her health in Nigeria given the country's current security situation and the applicant's medical issues. It has thus been established that the applicant's spouse would suffer extreme hardship were she to relocate abroad to reside with the applicant due to his inadmissibility.

Letters from the applicant's children in support of their father make no reference to their own relocation to Nigeria to reside with the applicant.

We can find extreme hardship warranting a waiver of inadmissibility only where an applicant has demonstrated extreme hardship to a qualifying relative in the scenario of separation and the scenario of relocation. A claim that a qualifying relative will relocate and thereby suffer extreme hardship can easily be made for purposes of the waiver even where there is no actual intention to relocate. *Cf. Matter of Ige*, 20 I&N Dec. 880, 886 (BIA 1994). Furthermore, to relocate and suffer extreme hardship, where remaining in the United States and being separated from the applicant would not result in extreme hardship, is a matter of choice and not the result of inadmissibility. *Id.*, also *cf. Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996). As the applicant has not demonstrated extreme hardship from separation, we cannot find that refusal of admission would result in extreme hardship to the qualifying relatives in this case.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.