



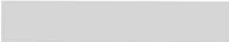
**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **JUN 22 2015**

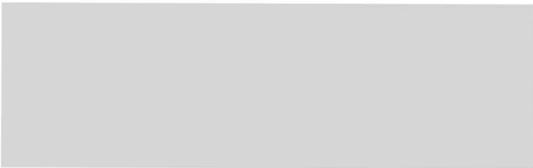
FILE: 

APPLICATION RECEIPT: 

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 is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Atlanta Field Office, denied the application. 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 Ghana 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 applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her U.S. citizen spouse.

The field office director determined that the applicant failed to establish extreme hardship to a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated May 20, 2014.

On appeal, filed on June 13, 2014, and received at the AAO on January 2, 2015, the applicant asserts that the field office director erred by not finding her spouse would suffer extreme hardship due to her inadmissibility. With the appeal the applicant submits a statement. The record contains affidavits from the applicant and her spouse, country information for Ghana, financial documentation, mental health documentation for the applicant's spouse, letters of support, and other evidence submitted in conjunction with the current Application to Adjust Status (Form I-485) and a previously-filed I-130 petition and I-485 application. The entire record was reviewed and considered in rendering this decision.

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).

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

(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 –

....

(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 record reflects that the applicant entered the United States on October 11, 2002 as a B-2 visitor and married her spouse on [REDACTED] 2007. On [REDACTED] 2011, the applicant was convicted in Superior Court of [REDACTED] Georgia, of False Statements in violation of Georgia criminal code section 16-10-20, for which she was sentenced to three years of confinement to be served on probation, fined \$1,000, and given 40 hours of community service.

At the time of the applicant's conviction O.C.G.A. 16-10-20 stated:

False statements and writings; concealment of facts

A person who knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact; makes a false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document, knowing the same to contain any false, fictitious, or fraudulent statement or entry, in any matter within the jurisdiction of any department or agency of state government or of the government of any county, city, or other political subdivision of this state shall, upon conviction thereof, be punished by a fine of not more than \$1,000.00 or by imprisonment for not less than one nor more than five years, or both.

Fraud has, as a general rule, been held to involve moral turpitude. In *Jordan v. De George*, 341 U.S. 223 (1951), the U.S. Supreme Court stated that “[t]he phrase ‘crime involving moral turpitude’ has without exception been construed to embrace fraudulent conduct.” 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). The Sixth Circuit Court of Appeals has held that the

BIA properly determined convictions for making a false, fictitious, or fraudulent statement to a governmental agency constitutes CIMT under INA § 212(a)(2)(A)(i)(I). *See Kellermann v Holder*, 592 F.3d 700 (6th Cir. 2010).

Therefore, we concur with the field office director's finding that the applicant's conviction is a crime involving moral turpitude. The applicant has not contested the finding that she is inadmissible for having been convicted of a crime involving moral turpitude. As the maximum penalty for the applicant's conviction exceeded more than one year imprisonment and she was sentenced to more than six months, she does not qualify for an exception under Section 212(a)(2)(A)(ii)(II) of the Act.

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 is the only qualifying relative 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.

On appeal the applicant contends that she and her spouse depend on each other largely due to her spouse’s drug and alcohol addiction. She states that her spouse has been enrolled in a rehabilitation program for several years and that she has influenced him to become clean and has been his motivation through the process. She asserts that her spouse is fragile and that removing her as his inspiration and motivation would be catastrophic, causing him to live in poverty as his income is below poverty level guidelines. She also states that she and her spouse want to start a family and can only do so through treatments that are expensive, so if she were in Ghana it is unlikely they could ever save enough money for treatment. She states that the thought of never becoming a parent is saddening to her, especially given the stress they have gone through with her spouse’s addiction.

In an affidavit dated May 17, 2012, the applicant’s spouse states that he struggled with addiction to cocaine and alcohol, but that the applicant stood by him and that he would not have survived these years without her. He states that he has been living in an adult rehabilitation center for the past 18 months, at the time of his affidavit, and that he was continuing to stay there because the center helps with finding work and has educational components and mentors, and he wants to teach and provide focus for others. The spouse states that he spends time with the applicant on weekends and that she motivates him for a better life. In a statement dated October 28, 2011, the spouse stated that he had hidden his addiction from the applicant so she would not leave him, and that she has never left his side during his treatment.

A letter dated October 18, 2011, from [REDACTED], a ministry center of the [REDACTED] states that the applicant’s spouse was doing well in programs and volunteers to help others. A letter dated December 29, 2008, from the [REDACTED] states that the applicant’s spouse had been admitted

for treatment of alcohol dependence. A psychiatric evaluation dated December 24, 2008, describes the applicant's spouse's alcohol and drug abuse and states that his stressors were loss of job and his wife as the breadwinner, but that there was no history of psychotropic medication use.

Although evidence in the record shows that the applicant's spouse is recovering from substance abuse, there is no updated documentation of his current condition, and the affidavits from the applicant and her spouse provide little detail of his current situation, the effects on his daily life, and the assistance provided by the applicant. Although we are sympathetic to the spouse's circumstances, the record does not provide sufficient evidence to show that the spouse would suffer extreme emotional hardship due to separation from the applicant.

The applicant asserts that her spouse would live below the poverty level without her. Financial documentation in the record includes lease agreements from 2008, 2009, and 2011; the spouse's 2006 Form W-2, income tax return, and letter from his employer; income tax returns for 2006, 2007, 2008, 2009, and 2010; bank statements from 2008 and 2011; and utility bills from 2009 and 2011. However, no updated documentation has been submitted establishing the spouse's financial situation, including any income, expenses, assets, and liabilities. There is insufficient evidence to establish that, due to separation from the applicant, the applicant's spouse would experience a financial hardship which rises above what is common.

We recognize that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the difficulties that the applicant's spouse would face as a result of his separation from the applicant, even when considered in the aggregate, do not rise to the level of extreme as contemplated by statute and case law.

We find, however, that the record establishes that the applicant's spouse would suffer extreme hardship if he were to relocate to Ghana to reside with the applicant. The applicant's spouse states that he could not handle the stress of living outside of the United States. On appeal the applicant states that her spouse has never been outside of the United States and that if he went to Ghana he would live with her family, which shares a one-bedroom home with no electricity or sewage, and that he is ill-equipped to handle living conditions there. She states that her spouse relies on rehabilitation programs in the United States and that there is little opportunity to find a replacement program in Ghana. In her affidavit dated May 17, 2012, the applicant states that her spouse could not survive in Ghana as he would lose the support system from his rehabilitation group and connections, and that he would not be able live out his calling of counseling and teaching others. She also states that he would not be safe in Ghana because people would think that since he is American he has a lot of money and he could be kidnapped. She further asserts that in Ghana she could not earn enough to support herself, let alone her spouse.

The applicant has submitted country information that indicates Ghana experiences poor wages, that medical facilities are limited, and that robberies occur in expatriate areas. According to the U.S. Department of State medical facilities in Ghana are limited. It notes that due to the potential for violence, U.S. citizens should avoid political rallies and stay aware of their safety at all times, and that incidences of violent crime are on the rise, including armed robberies in expatriate residential and

shopping areas. See *U.S. Department of State, Bureau of Consular Affairs - Ghana*, dated July 18, 2014.

The record establishes that the applicant's U.S. citizen spouse was born in the United States and has no ties to Ghana. He would have to leave his family, community, and support network, and be concerned about his living conditions, his financial well-being, and his health as well as his safety in Ghana. We find that evidence in the record, considered in the aggregate, establishes that the applicant's spouse would suffer extreme hardship were he to relocate abroad to reside with the applicant due to her inadmissibility.

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 relative in this case.

As the applicant has not established extreme hardship to a qualifying family member, no purpose would be served in determining whether the applicant merits a waiver as a matter of discretion.

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 will be dismissed.