



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

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF A-A-G-B-

DATE: SEPT. 17, 2015

APPEAL OF NEWARK FIELD OFFICE DECISION

APPLICATION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Nigeria, seeks a waiver of inadmissibility. *See* Immigration and Nationality Act (INA, or the Act) § 212(h), 8 U.S.C. § 1182(h). The Field Office Director, Newark Field Office, denied the application. The matter is now before us on appeal. The appeal will be dismissed.

The Applicant was found to be inadmissible to the United States pursuant to 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 Form I-130, Petition for Alien Relative, and is married to a U.S. citizen. She seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen spouse.

The Field Office Director concluded that the Applicant had not established that her removal would result in extreme hardship to the Applicant's qualifying spouse and denied the Form I-601 accordingly.

On appeal, the Applicant asserts that the evidence in the record, considered in its totality, clearly demonstrates that her spouse would suffer extreme hardship if she is removed.

The record includes, but is not limited to: a brief, statements from the applicant's qualifying spouse, identity and relationship documents, medical records, financial records, court records, reports on conditions in Nigeria, and 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.

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(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 Applicant was arrested in [REDACTED] New Jersey, on [REDACTED] 2004, and charged with two counts of knowingly exhibiting documents falsely purported to be a form of identification, and two counts of possession of simulated documents falsely purported to be a form of identification. The Applicant, who was born on [REDACTED], was 29 years old at the time she committed the acts that resulted in her arrest.

On [REDACTED] 2007, the Applicant was convicted in New Jersey Superior Court of one count of knowingly exhibiting a document falsely purported to be a form of identification, in violation of New Jersey criminal code § 2C:21-2.1C, which is punishable by a term of imprisonment up to 18 months. All other charges were dismissed and the Applicant was placed on probation for one year.

At the time of the Applicant's conviction, New Jersey Code § 2C:21-2.1C provided, in pertinent part:

A person who knowingly exhibits, displays or utters a document or other writing which falsely purports to be a driver's license, birth certificate or other document issued by a governmental agency and which could be used as a means of verifying a person's identity or age or any other personal identifying information is guilty of a crime of the third degree

The Board has held that a false statement in writing that the individual knows is untrue, made with the intent to mislead a public official and to interfere with that official's duties, involves moral turpitude. *Matter of Jurado*, 24 I&N Dec. 29, 33 (BIA 2006). Similarly, a false statement involving the use of another person's name and Social Security number in an application for a U.S. passport involves moral turpitude. *Matter of Correa-Garces*, 20 I&N Dec. 451, 454 (BIA 1992). From these cases, it can be concluded that the possession and use of documents for the purpose of establishing something false, be it a false identity, status, or occupation, is accompanied by a "vicious motive or corrupt mind" and constitutes a crime involving moral turpitude. *See, e.g., Omagah v. Ashcroft*, 288 F.3d 254, 262 (5th Cir. 2002) (finding that crimes that include "dishonesty or lying as an essential element" tend to involve moral turpitude); *see also Itani v. Ashcroft*, 298 F.3d 1213, 1216 (11th Cir. 2002) ("Generally, a crime involving dishonesty or false statement is considered to be one involving moral turpitude."). Therefore, we concur that the Applicant's conviction is for a crime involving moral turpitude. The Applicant does not contest this determination on appeal.

Therefore, the Applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for her conviction of a crime involving moral turpitude.

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

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

. . . .

(1) (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 [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(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. 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-Morales*, 21 I&N Dec. 296 (BIA 1996). The applicant's U.S. citizen spouse is her qualifying relative.

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

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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 1292, 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.

We will first address hardship to the Applicant's qualifying spouse if he relocates to Nigeria. The Applicant's spouse asserts that he cares for his ill mother and he does not want to abandon her to live alone, particularly since she has had a kidney transplant. He states he has no ties in Nigeria and that he is unfamiliar with its culture. He says he does not speak any of Nigeria's native languages. He asserts that he would suffer financial hardship because he would lose his current job, where he has worked for 18 years, if he relocated. He states he would lose his pension and medical benefits and that he needs access to health care because he injured his wrist and has diabetes. He further states that he fears the high crime rate and communal violence in Nigeria.

With regard to emotional hardship, the Applicant's spouse says he has lived his entire life in the United States and he has no ties to Nigeria. The record reflects that he was born and raised in the United States. He would become separated from his family, especially his mother.

Regarding financial hardship, the Applicant's spouse would have to leave his current employment and health insurance benefits behind if he relocates. He expresses concern about finding employment in Nigeria given his hand injury. He provided articles about the prevalence of poverty and the existence of crime and communal violence in Nigeria.

In review, the evidence is sufficient to establish that the Applicant's spouse would suffer extreme hardship upon relocation to Nigeria. The U.S. Department of State reports indicate that Boko Haram has perpetrated numerous attacks throughout much of the country, often targeting civilians. The country is experiencing serious problems of ethnic and religious tensions. The Applicant also submits reports documenting the prevalence of poverty in Nigeria. Taking into account these country conditions, the Applicant's spouse's significant ties to the United States, his health and his age, we find the evidence considered cumulatively shows that he would experience extreme hardship were he to relocate to Nigeria with the Applicant.

We will now address hardship to the Applicant's qualifying spouse if he remains in the United States. The Applicant's spouse states that if the Applicant is removed, he will have to care for his step-daughter, the Applicant's daughter, alone. He says that he cannot do so while he is injured. He says that his expenses would increase because once he returns to work, he would have to pay for after school care for his [redacted] year-old step-daughter. He says that he has physical therapy three times a week, which prevents him from picking up his step-daughter from school.

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The Applicant's claims concerning her spouse's injury, however, are accorded limited weight, given evidence in the record showing that her spouse's injury was temporary. The evidence shows that he required help at home for six weeks beginning May 19, 2014. The record also establishes that her spouse has type 2 diabetes.

The Applicant has not submitted documentation reflecting the cost of after-school care for her daughter or showing that her spouse would be unable to afford to pay for such care.

The evidence is insufficient to establish that the Applicant's spouse would suffer emotional, financial, medical or other types of hardship that, considered in the aggregate, establishes that he would suffer extreme hardship upon separation from 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 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 her qualifying relative 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.

Cite as *Matter of A-A-G-B-*, ID# 10700 (AAO Sept. 17, 2015)