



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

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

MATTER OF W-N-

DATE: FEB. 26, 2016

APPEAL OF BUFFALO FIELD OFFICE DECISION

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

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

The Applicant is inadmissible to the United States pursuant to 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 a crime involving moral turpitude; and under section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for twice having procured admission to the United States based on material misrepresentations.<sup>1</sup>

The Director denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, in a decision dated July 8, 2015, determining that the Applicant did not demonstrate extreme hardship to his qualifying relative and that he did not warrant a favorable exercise of discretion.

On appeal, the Applicant states that he qualifies for the petty offense exception for his criminal inadmissibility, that his U.S. lawful permanent resident spouse and children will suffer extreme hardship as a result of his inadmissibility, and that he merits a waiver in the exercise of discretion.

The record includes, but is not limited to: briefs, affidavits, and letters from the Applicant's spouse, children, other family members, and community members; documents establishing identity; copies of amended tax return documents; letters concerning employment history; medical records for the Applicant's spouse; photographs; and country conditions information. The entire record was reviewed and considered in rendering this decision.

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<sup>1</sup> The Applicant is now subject to a final order of removal and will also become inadmissible under section 212(a)(9)(A)(i) of the Act, 8 U.S.C. § 1182(a)(9)(A)(i), for which he will need to file a Form I-212, Application for Permission to Reapply for Admission into the United States after Deportation or Removal, after his removal from the United States.

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Section 212(a)(6)(C)(i) of the Act states:

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 Applicant states that he obtained admission to the United States on or around November 11, 1992, using a Ghanaian passport and U.S. visa issued to another individual. The record also reflects that the Applicant departed the United States and attempted to re-enter at the [REDACTED] port-of-entry on December 21, 2000, using a Canadian citizenship card issued to another individual. In both instances the Applicant presented himself as another individual to obtain admission to the United States, misrepresenting material facts concerning his true identity, and, as a result, is inadmissible under section 212(a)(6)(C)(i) of the Act. The Applicant does not contest the finding of inadmissibility.

Section 212(i)(1) of the Act provides that section 212(a)(6)(C)(i) inadmissibility may be waived as a matter of discretion for

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 . . . that the refusal of admission . . . would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The Applicant also is inadmissible under Section 212(a)(2)(A) of the Act, which states, in pertinent parts:

(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, or

....

(ii) Exception

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

....

(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 Act does not define the term “crime involving moral turpitude.” In *Matter of Perez-Contreras*, the Board of Immigration Appeals (BIA or Board) provided:

[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.

20 I&N Dec. 615, 617-18 (BIA 1992) (citations omitted); *see also Matter of Solon*, 24 I&N Dec. 239, 240 (BIA 2007); *Matter of Ajami*, 22 I&N Dec. 949, 950 (BIA 1999); *Keungne v. U.S. Att’y Gen.*, 561 F.3d 1281, 1284 (11th Cir. 2009) (citing *Vuksanovic v. U.S. Att’y Gen.*, 439 F.3d 1308, 1311 (11th Cir. 2006)).

In assessing whether a conviction is a crime involving moral turpitude, we must first “determine what law, or portion of law, was violated.” *Matter of Esfandiary*, 16 I&N Dec. 659, 660 (BIA 1979). We conduct a categorical inquiry for that statutory offense, considering the “inherent nature of the crime as defined by statute and interpreted by the courts,” not the underlying facts of the crime committed. *Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989); *see also Matter of Louissaint*, 24 I&N Dec. 754, 757 (BIA 2009) (citing *Taylor v. United States*, 495 U.S. 575, 599-600 (1990)). This categorical inquiry focuses on whether moral turpitude necessarily inheres in the minimal conduct for which there is a realistic probability of prosecution under the statute. *See Short, supra; Louissaint, supra; Moncrieffe v. Holder*, 133 S.Ct. 1678, 1684-1685 (2013); *Gonzales v. Duenas-Alvarez*, 127 S.Ct. 815, 822 (2007).

Where a criminal statute does not contain a single, indivisible set of elements, but rather encompasses multiple distinct criminal offenses, “some . . . which involve moral turpitude and some which do not,” we engage in a modified categorical inquiry. *Short, supra*, at 137-138. A statute is divisible only if it lists “potential offense elements in the alternative, render[ing] opaque which element played a part in the defendant’s conviction.” *Descamps v. United States*, 133 S. Ct. 2276, 2283 (2013).

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We conduct a modified categorical inquiry by reviewing the record of conviction to determine which offense within the divisible statute was the basis of the conviction, and then determine whether that statutory offense is categorically a crime involving moral turpitude. *See Short, supra*, at 137-38; *see also Descamps, supra*, at 2285-86. The record of conviction is a narrow, specific set of documents which includes the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Louissant, supra*, at 757; *see also Shepard v. U.S.*, 544 U.S. 13, 16 (2005) (finding that the record of conviction is limited to the “charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented.”)

On [REDACTED] 2007, before the U.S. District Court for the [REDACTED] of New York, the Applicant pled guilty to conspiracy to file false claims with the Internal Revenue Service (IRS), in violation of 18 U.S.C. § 286; transfer and use of stolen Social Security numbers, in violation of 18 U.S.C. § 1028(a)(7); and trafficking in fraudulent alien registration cards, in violation of 18 U.S.C. § 1546. The records indicate that the last of these offenses occurred on [REDACTED] 2004. As a result of his convictions, the Applicant was sentenced to three years of probation, ordered to pay \$32,877 in restitution, and required to pay a special assessment of \$300.

Only one of the statutory provisions under which the Applicant was convicted need constitute a crime involving moral turpitude for the Applicant to be inadmissible under section 212(a)(2)(A) of the Act. Conspiracy to file false claims with the IRS, in violation of 18 U.S.C. §286, provided, at the time of the Applicant’s conviction:

Conspiracy to defraud the Government with respect to claims

Whoever enters into any agreement, combination, or conspiracy to defraud the United States, or any department or agency thereof, by obtaining or aiding to obtain the payment or allowance of any false, fictitious or fraudulent claim, shall be fined under this title or imprisoned not more than ten years, or both.

Crimes that include as a requirement an intent to defraud have been held to involve moral turpitude. *Matter of Adetiba*, 20 I&N Dec. 506, 512 (BIA 1992). In *Matter of Flores*, the Board of Immigration Appeals (Board) also held that uttering and selling false or counterfeit paper related to the registry of foreign nationals was a crime involving moral turpitude, even though intent to defraud was not an explicit statutory element. 17 I&N Dec. 225, 230 (BIA 1980). The Board explained that “where fraud is inherent in an offense, it is not necessary that the statute prohibiting it include the usual phraseology concerning fraud in order for it to involve moral turpitude.” *Id.* at 228; *see also Matter of R-*, 5 I&N Dec. 29 (BIA 1952; A.G. 1952; BIA 1953); *Matter of Kochlani*, 24 I&N Dec. 128, 130-131 (BIA 2007) (“[C]ertain crimes are inherently fraudulent and involve moral turpitude even though they can be committed without a specific intent to defraud.”).

The Board has also held that in cases involving fraud of the government, the government need not have lost money or property in order for the crime to involve moral turpitude. *Matter of S--*, 2 I&N

Dec. 225 (BIA 1944). Instead, the mere act of obstructing an important function of a department of the government by deceitful means is sufficient to find moral turpitude. *Matter of Flores*, 17 I&N Dec. at 229; *see also Matter of D-*, 9 I&N Dec. 605, 608 (BIA 1962); *Matter of E-*, 9 I&N Dec. 421, 423-24 (BIA 1961).

The immigration judge held that the Applicant's conviction involved moral turpitude, and we do not see any reason to disturb that holding. We find that the Applicant's conviction under 18 U.S.C. § 286 involves moral turpitude.

On appeal, the Applicant states that he is eligible for the exception at section 212(a)(2)(A)(ii)(II), as his sentence was for less than six months. The Applicant, however, is not eligible for this exception, as the maximum penalty possible for the crime of which the Applicant was convicted, 18 U.S.C. § 286, exceeds imprisonment for one year. The statute provides for a penalty of a fine or imprisonment to not exceed 10 years, or both.

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

The Attorney General [now Secretary of Homeland Security (Secretary)] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that -

(i) . . . 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 [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;

. . . .

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Because the activities that are the basis for the Applicant's criminal conviction occurred less than 15 years ago, the Applicant is only eligible for a waiver under section 212(h)(1)(B) of the Act, which requires that he show extreme hardship to a qualifying relative.

Under sections 212(i) and 212(h) of the Act, the Applicant must demonstrate that denial of his application would result in extreme hardship to a qualifying relative or relatives. Under section 212(h), qualifying relatives include U.S. citizen children; under section 212(i), however, the only qualifying relative is the Applicant's U.S. lawful permanent resident spouse. Thus the Applicant must demonstrate extreme hardship to his spouse. Hardship to the Applicant and his children may be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists "only in cases of great actual and prospective injury," *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984), but hardship "need not be unique to be extreme." *Matter of L-O-G-*, 21 I&N Dec. 413, 418 (BIA 1996). The common consequences of removal or refusal of admission, which include "economic detriment . . . [,] loss of current employment, the inability to maintain one's standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment," are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); *see also Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (separation of family members and financial difficulties alone do not establish extreme hardship); *but see Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted).

The Applicant and his spouse have been married since [REDACTED] 1997, and together have two sons, ages [REDACTED] and [REDACTED]. The record indicates that the Applicant has been detained since being returned to U.S. custody on [REDACTED] 2014, after having been apprehended by Canadian authorities for attempting to enter Canada with false documents. The Applicant states that his spouse's emotional, physical, and financial hardship amounts to extreme hardship. In her affidavit dated August 5, 2015, the Applicant's spouse states that she and their adult children will suffer severe psychological, emotional, medical, and economical difficulty if the Applicant's Form I-601 is denied. As stated above, we will consider hardship to the Applicant's children insofar as their hardship is shown to affect the Applicant's spouse, his qualifying relative under the Act.

In regard to medical and emotional hardship, the Applicant and his spouse state that the Applicant's spouse has an adrenal tumor. They also state that she has been to the emergency room and has been hospitalized numerous times in the last year because of her hypertension. The Applicant's spouse

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states that she takes medication to control hypertension and for anxiety that helps her function at work. According to a partially illegible letter dated June 11, 2015, from the [REDACTED] the Applicant's spouse has been seen in the clinic for serious illness with headaches and poor concentration. The letter states that the Applicant's spouse is being "worked up for pheochromocytoma," is in distress, and needs help from the Applicant. The letter does not state that the Applicant's spouse was diagnosed with pheochromocytoma or specify the type of assistance the Applicant's spouse needs from the Applicant. A document in the record from the [REDACTED] states that pheochromocytoma is an adrenaline-producing tumor. A licensed clinical social worker at the [REDACTED] states in her letter dated August 12, 2015, that she has seen the Applicant's spouse twice and his spouse is experiencing sadness and emotional and financial stress attributed to the Applicant's absence. In addition, a [REDACTED] nurse practitioner, in her letter dated October 17, 2015, states that the Applicant's spouse has uncontrolled hypertension and is in a depressed state. The letter states that the Applicant's spouse was referred to "cardiology and nephrology to find an underlying cause for her continued hypertension which is unremitting even on four medications." She also states that the Applicant's spouse has a better prognosis with the support of her spouse, but she does not identify what support is needed from the Applicant. Additional documentation illustrates that the Applicant's spouse takes various medications. The Applicant has established that his spouse is suffering from hypertension and experiences depression and anxiety, but the record does not support the assertions he makes on appeal that his spouse suffers from an adrenal tumor that has caused her depression and may become fatal.

Moreover, the Applicant states that his spouse also is suffering financially as a result of his inadmissibility, in particular as a result of the effect his detention has had on her health and ability to work. The record does not show, however, that the Applicant's spouse has been unable to work as a result of her health. Although the nurse practitioner stated in her October 2015 letter that the Applicant's spouse reported that she was without work, and the Applicant's son, in a letter dated November 11, 2014, states that his mother has been without work for some time, according to another letter dated December 23, 2014, the Applicant's spouse was employed with a home health services company since October 25, 2014, and worked 36 hours per week. According to that letter, the Applicant's spouse earns 11 dollars an hour. The record includes amended federal tax returns for the Applicant and his spouse from as recently as 2013, yet these do not indicate the total income of each individual, as they were filed jointly. While the Applicant's spouse refers to unpaid rent and the need to rely on family members for financial assistance, the record lacks documentation concerning her expenses and claimed debt. Based on this limited and contradictory information, we cannot determine the degree to which the Applicant's spouse relies on the Applicant's financial contributions or the degree of financial hardship she would experience in his absence.

The Applicant's spouse also states that she cannot raise two children without him as a result of her illness, and because the Applicant worked closer to home than she did, he responded to the children in emergency situations. The Applicant's [REDACTED] year-old son, in a letter, details the important role he has played in his life and explains that his mother is illiterate and without work. The Applicant's spouse states that their eldest son lost a basketball scholarship and had to drop out of college due to

financial reasons. She also states that their son recently was accidentally shot. The Applicant provides no documentation to corroborate claims concerning his children's pursuits of higher education, scholarships, financial difficulties, or injuries. Moreover, no documentation in the record indicates where the Applicant's adult children presently reside, whether their behavior issues affect the Applicant's spouse, and whether they still are financially dependent on their parents. The Applicant also does not address the financial support he could be expected to contribute from Ghana.

The Applicant's spouse, who is a lawful permanent resident in the United States and a native of Ghana, states that she cannot return to Ghana without suffering extreme hardship as a result of her health and the inability of their sons to pursue their educational goals there. The documentation shows that the health care system in Ghana has problems, but it does not show that the Applicant's spouse's specific conditions cannot be treated there. The Applicant states on appeal that his spouse could not obtain treatment for her adrenal tumor in Ghana. The record, however, does not establish that the Applicant's spouse has an adrenal tumor, nor does it include evidence of the treatment she is receiving for said tumor, or show that the treatment is unavailable in Ghana. In addition, the Applicant specifically states that there are only six oncologists in Ghana; however, no documentation shows that the Applicant's spouse requires the care of an oncologist. The record indicates that the Applicant's spouse receives treatment for hypertension, depression, and anxiety. The record shows that the Applicant's spouse visited Ghana for three weeks in 2013, but the Applicant's spouse does not state whether her medical condition, which existed at that time, worsened there or whether she was able to obtain her medications or treatment in Ghana.

In her affidavit dated August 5, 2015, the Applicant's spouse stated that she would have trouble integrating into Ghanaian society, but she did not provide details to support her statement. She also did not state that she had difficulties when she visited Ghana in 2013 and on earlier occasions. In addition, the Applicant and his spouse mention that U.S. immigration officers found that the Applicant had a credible fear of return to Ghana; however, an immigration judge denied his applications for asylum and withholding of removal last year, and the Board of Immigration Appeals upheld that decision. The record does not support the conclusion that the Applicant's life is at risk in Ghana, although the Applicant's spouse states that she fears for the Applicant's life there. The Applicant's spouse is a long time permanent resident of the United States; however, she has not become a U.S. citizen and remains a citizen of Ghana. Although the Applicant's spouse states that most of her family lives in the United States, the Applicant provides no documentation addressing the present residence of their oldest son or the other family members who his spouse states reside in the United States. The evidence of record, considered cumulatively, does not establish that the hardship that the Applicant's spouse would experience as a result of his inadmissibility is extreme.

As the Applicant has not demonstrated extreme hardship to a qualifying relative or relatives, we need not consider whether the Applicant warrants a waiver in the exercise 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.

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**ORDER:** The appeal is dismissed.

Cite as *Matter of W-N-*, ID# 16913 (AAO Feb. 26, 2016)