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

715



Date: **MAY 22 2012**

Office: LAWRENCE, MA

FILE: 

IN RE:

Applicant: 

APPLICATION:

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

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

for

Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Lawrence, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Nigeria who was found to be inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking a benefit under the Act by willful misrepresentation, and 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. She seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband and four children.

The director denied the Form I-601 application for a waiver, finding that the applicant failed to establish extreme hardship to a qualifying relative. *Decision of the Director*, dated March 2, 2010.

On appeal, counsel for the applicant asserts that the applicant's husband and children will suffer extreme hardship should the present waiver application be denied, particularly in light of the applicant's husband's recent severe health status. *Brief from Counsel*, submitted March 24, 2010; *Counsel's Correspondence with Supplemental Evidence*, dated April 20, 2010.

The record contains, but is not limited to: a brief from counsel; documentation in connection with the applicant's husband's brain surgery and health status; documentation regarding conditions in Nigeria; statements from the applicant's husband and daughters; documentation regarding the applicant's daughters' academic achievements; copies of birth certificates for the applicant's children; documentation regarding the applicant's husband's employment; and documentation in connection with the applicant's criminal conviction. The entire record was reviewed and considered in rendering this decision.

Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

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 record shows that on or about October 29, 1987, the applicant appeared at a United States passport office in New Orleans, Louisiana, and falsely claimed to be a U.S. citizen for the purpose of obtaining a U.S. passport. She was arrested on October 29, 1987, and ultimately pled guilty to a charge of False Claim of American Citizenship under 18 U.S.C. § 911. As a result, she was removed to Nigeria on November 19, 1987. She reentered the United States without inspection on an unknown date, at some point prior to the birth of one of her children on January 11, 1989. The director found that the applicant committed further acts of misrepresentation due to failing to reveal her arrest, conviction, and prior entry to and removal from the United States in the course of proceedings regarding her Form I-765 application for employment authorization and Form I-485 application to adjust her status to lawful permanent resident. Accordingly, the director determined that the applicant sought benefits under the Act by making material misrepresentations, rendering her inadmissible under section 212(a)(6)(C)(i) of

the Act. The applicant does not contest her inadmissibility on appeal, and she requires a waiver under section 212(i) of the Act.

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.)

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.

As noted above, the applicant pled guilty to a charge of False Claim of American Citizenship under 18 U.S.C. § 911 in 1987 due to the fact that she claimed to be a U.S. citizen and presented false documentation in order to attempt to obtain a U.S. passport. Based on this conviction, the director determined that the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. The AAO notes that the Board of Immigration Appeals (BIA) has commented that violations of 18 U.S.C. § 911 do not constitute crimes involving moral turpitude, and the applicant may not be inadmissible under section 212(a)(2)(A)(i)(I) of the Act. *See Matter of B-*, 7 I&N Dec. 342, 345 (BIA 1956). However, the applicant does not contest her inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on appeal. As the record clearly shows that she is inadmissible under section 212(a)(6)(C)(i) of the Act and she requires a waiver of inadmissibility, we need not determine whether she is also inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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

- (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 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 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.

A waiver of inadmissibility under section 212(i) 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 or parent of the applicant. Hardship to the applicant can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the only qualifying relative under section 212(i) of the Act. 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-Morales*, 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 deportation, 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. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *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.*

We observe that 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., *In re 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).

The applicant has shown that her husband will suffer extreme hardship should the present waiver application be denied. A letter from [REDACTED] neurosurgical resident at the [REDACTED] reports that the applicant's husband underwent major brain surgery on April 12, 2010 “for a large and symptomatic subdural hematoma.” [REDACTED] stated that the operation required a stay in an intensive care unit as well as an additional hospital stay, and that the applicant's husband would “require care at home for help with his activities of daily living in the form of a home care nurse during his next stage of recovery.” [REDACTED] commented that the applicant was at home caring for her and her husband's children.¹

The record shows that the applicant and her husband have four children, ages nine, 18, 20, and 23. The medical documentation for the applicant's husband supports that his health status significantly hinders him from independently and fully meeting the financial, emotional, and physical needs of his household, including caring for their nine-year-old son and supporting their three older daughters. The applicant's husband and daughters provided statements that show that they have been a close family, and that the applicant has played a primary role in raising the children. In a statement dated December 10, 2009, the applicant's husband indicated that he has been the sole financial provider for their family, and it is evident that his current health condition hinders him from continuing to do so. It is evident that the applicant's husband would face extreme hardship should the applicant depart the United States and he attempt to meet his and their children's needs in her absence.

The record establishes that the applicant's husband would also suffer extreme hardship should he relocate to Nigeria. As discussed above, he has experience significant health problems that required brain surgery and protracted recovery. It is evident that he would face significant physical and

[REDACTED] stated that the applicant and her husband have five children. However, the applicant has provided birth certificates and evidence to support that they have four children.

emotional hardship should he uprooted his life in the United States, relocate to Nigeria, and become separated from the doctors who provide his care. His health status seriously complicates the challenges of relocating to another country, including securing new employment, establishing new healthcare providers, maintaining a stable environment in which he can continue his recovery, separating from his country and culture in the United States, and supporting his children and the applicant. While the applicant's children are not qualifying relatives under section 212(i) of the Act, it is evident that her husband would face additional emotional difficulty due to hardship their children would face upon relocation to Nigeria or the separation of their family.

Based on the foregoing, the applicant has shown that denial of the present waiver application "would result in extreme hardship" to her husband, as required for a waiver under section 212(i) of the Act.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996), the BIA held that establishing extreme hardship and eligibility for a waiver of inadmissibility does not create an entitlement to that relief, and that extreme hardship, once established, is but one favorable discretionary factor to be considered. All negative factors may be considered when deciding whether or not to grant a favorable exercise of discretion. See *Matter of Cervantes-Gonzalez*, *supra*, at 12.

The negative factors in this case consist of the following:

The applicant has engaged in multiple acts of misrepresentation to obtain immigration benefits, including falsely claiming to be a United States citizen to obtain a U.S. passport and failing to reveal her criminal conviction and removal when applying for lawful permanent residence and employment authorization. The applicant was convicted of making a false claim to U.S. citizenship for her conduct in 1987. The applicant entered the United States without inspection on an unknown date between November 9, 1987 and January 11, 1989. The applicant has remained in the United States for a lengthy period without a lawful immigration status.

The positive factors in this case include:

The applicant's U.S. citizen husband will suffer extreme hardship should she return to Nigeria, and her presence in the United States is integral to his recovery from a severe health condition. The applicant's U.S. citizen children will face significant hardship should they relocate to Nigeria with the applicant or become separated from her. The applicant has cared for her four U.S. citizen children and offered emotional support for her family. The applicant has only been convicted of a single crime that occurred over 24 years ago, and the record does not show that she has a propensity to engage in criminal conduct.

The applicant's deliberate acts of misrepresentation to obtain immigration benefits call into question her veracity, moral character, and respect for the laws of the United States. However, the AAO recognizes that her husband is in a precarious position, and that he faces severe consequences should the applicant be compelled to reside outside the United States. The AAO finds that benefits of keeping the applicant's family unified in the United States outweigh the gravity of the applicant's prior misconduct, and she warrants a favorable exercise of discretion.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden that she merits approval of her application.

ORDER: The appeal is sustained.