



U.S. Citizenship
and Immigration
Services

(b)(6)

Date: **MAR 23 2015**

Office: NEWARK FIELD OFFICE

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

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

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,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Newark, New Jersey, 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 Ghana who was found to be inadmissible to the United States under section 212(a)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for attempting to procure admission to the United States through fraud or misrepresentation. The applicant was also found to be 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 committed crimes involving moral turpitude. The applicant is the beneficiary of an approved Petition for Alien Relative (Form I-130) and seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i), to remain in the United States with his U.S. citizen spouse and children.

The field office director found that the applicant failed to establish that a qualifying relative would experience extreme hardship as a consequence of his inadmissibility. The Application for Waiver of Grounds of Inadmissibility (Form I-601) was denied accordingly. *See Decision of the Field Office Director* dated June 30, 2014.

On appeal the applicant contends that USCIS erred by finding that he had not submitted evidence of hardship to his spouse as a consequence of his inadmissibility. With the appeal the applicant submits a statement, medical documentation, income tax information, mortgage documentation, health insurance documentation, and copies of previously-submitted material. The record contains medical documentation for the applicant's spouse, a psychological evaluation for the applicant and his spouse, financial documentation, and other 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.

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.

Section 212(i) of the Act provides that:

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.

The record reflects that the applicant entered the United States on June 13, 1990, with a Liberian passport and U.S. visa issued in the name of another person. Based on this information the field office director determined the applicant was inadmissible for fraud or misrepresentation. The applicant has not disputed the field office director's finding that he is inadmissible for misrepresentation. The field office director also found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having committed 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.

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.

The record shows that the applicant was convicted on [REDACTED] 1997, in [REDACTED] New Jersey, for violating section 2C:28-3B of the New Jersey Code of Criminal Justice for Unsworn Falsification to Authorities. At the time of the applicant's 1997 conviction, section 2C:28-3B, Unsworn Falsification to Authorities, stated:

b. In general. A person commits a disorderly persons offense if, with purpose to mislead a public servant in performing his function, he:

(1) Makes any written false statement which he does not believe to be true;

- (2) Purposely creates a false impression in a written application for any pecuniary or other benefit, by omitting information necessary to prevent statements therein from being misleading;
- (3) Submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity; or
- (4) Submits or invites reliance on any sample, specimen, map, boundary-mark, or other object which he knows to be false.

In *Matter of Jurado*, 24 I&N Dec. 29 (BIA 2006), the Board of Immigration Appeals found a conviction for Unsworn Falsification to Authorities in violation of the Pennsylvania Consolidated Statutes is a crime involving moral turpitude. In that decision the BIA noted that conviction records showed a conviction under title 18, section 4904(a) of the Pennsylvania Consolidated Statutes, which provided, in pertinent part: “A person commits a misdemeanor of the second degree if, with intent to mislead a public servant in performing his official function, he: (1) makes any written false statement which he does not believe to be true; (2) submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity”

In *Matter of Jurado*, the BIA found that to be convicted under the Pennsylvania statute, “the perpetrator must make misleading statements with an intention to disrupt the performance of a public servant’s official duties.” 24 I&N Dec. at 35. The Board stated that “impairing and obstructing a function of a department of government by defeating its efficiency or destroying the value of its lawful operations by deceit, graft, trickery, or dishonest means is a crime involving moral turpitude,” and thus concluded that the offense involved moral turpitude. *Id.* (citing *Matter of Flores*, 17 I&N Dec. 225, 229 (BIA 1980); *Rodriguez v. Gonzales*, 451 F.3d 60, 64 (2nd Cir. 2006)). As a conviction for Unsworn Falsification to Authorities under New Jersey statute 2C:28-3B also requires the use of a false written statement or other writing with the belief or knowledge it is not true and with the intention to disrupt the performance of a public servant’s official duties, we find that the applicant’s conviction to be for a crime involving moral turpitude.

The record also shows that the applicant was convicted on [REDACTED] 2003, in [REDACTED] New Jersey, for violating section 2C:29-3A(7) of the New Jersey Code of Criminal Justice for Hindering Apprehension or Prosecution and was sentenced to 10 days in jail and a \$500 fine.

At the time of the applicant’s 2003 conviction, section 2C:29-3A(7) of the New Jersey criminal code stated in part:

2C:29-3. Hindering apprehension or prosecution

- a. A person commits an offense if, with purpose to hinder the detention, apprehension, investigation, prosecution, conviction or punishment of another for

an offense or violation of Title 39 of the New Jersey Statutes or a violation of chapter 33A of Title 17 of the Revised Statutes he:

....

(7) Gives false information to a law enforcement officer or a civil State investigator assigned to the Office of the Insurance Fraud Prosecutor established by section 32 of P.L.1998, c. 21 (C.17:33A-16).

As noted above, the BIA has held that impairing and obstructing a function of a department of government by defeating its efficiency or destroying the value of its lawful operations by deceit, graft, trickery, or dishonest means is a crime involving moral turpitude. *Matter of Jurado, supra*, at 35; *Matter of Flores*, 17 I&N Dec. 225, 229 (BIA 1980); *see also Navarro-Lopez v. Gonzales*, 455 F.3d 1055, 1058-59 (9th Cir. 2006) (stating that “a knowing, affirmative act to conceal [criminal activity] with the specific intent to hinder or avoid prosecution of the perpetrator, it is contrary to the duties owed society and constitutes a crime of moral turpitude”); *Itani v. Ashcroft*, 298 F.3d 1213 (11th Cir. 2002); *Matter of Robles*, 24 I&N Dec. 22, 25-26 (BIA 2006). The applicant was convicted of giving false information to a law enforcement officer to hinder the detention, apprehension, investigation, prosecution, conviction or punishment of another, which would impair and obstruct a function of a department of government. As such, we find it is a crime involved moral turpitude. The applicant is therefore inadmissible under section 212(a)(2)(A)(i)(I) of the Act for his two convictions for crimes involving moral turpitude and requires a waiver under section 212(h) of the Act.

Although the applicant’s children are qualifying relatives for a waiver under section 212(h) of the Act, the applicant requires a waiver under section 212(i) due to his inadmissibility for fraud or misrepresentation. 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. For this waiver the only qualifying relative is the applicant’s spouse. 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 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. *Salcido-Salcido v. INS*, 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.

The applicant contends that his spouse has medical conditions, and a 2011 psychological assessment reports that the spouse states she has only the applicant to take care of her, cannot do anything herself, and relies on him for financial and emotional support. A 2014 note from the spouse's doctor states that she has been under his care since September 2006 and is being treated for chronic iron deficient anemia that requires weekly iron infusions. Medical records from 2014 show the applicant's spouse also has polycystic ovary syndrome and 2011 records show that she underwent laparoscopic myomectomy surgery following a diagnosis of symptomatic fibroid uterus. However,

the record contains no explanation from a treating physician of the spouse's current condition or prognosis, or a description of any treatment she is undertaking that requires the applicant's physical presence in the United States. Without more detail we are unable to reach conclusions concerning the severity of the spouse's medical condition or the necessity of assistance from the applicant.

The psychosocial assessment provides background information on the applicant including, including information about his first marriage, his divorce, and his three children. It reports that the applicant and his current spouse state their love and respect for one another. The record, however, contains no statement from the applicant's spouse about any emotional hardship she would face due to separation from the applicant and the psychosocial report provides no evidence that the hardships the applicant's spouse would experience are beyond the hardships normally associated when a spouse is found to be inadmissible. The psychosocial assessment notes that although the applicant's children do not live with him, he is responsible for their needs, paying \$1,600 monthly child support, that he loves his children and that the children, two of whom the record shows are adults, would be devastated without him. However, the record does not contain evidence to establish that any hardship to the applicant's children would cause extreme emotional hardship to the applicant's spouse.

The applicant states that he earned \$107,000 in 2013, that his children are in school with him paying their fees, and that he and his spouse own their home and mortgage. The record contains an October 2013 bank document showing unapplied funds on a mortgage account and a November 2013 settlement statement listing another property address. The record contains a 2009 W-2 showing the applicant's spouse earned nearly \$50,000. The record, however, contains no explanation from the applicant or his spouse of financial hardship she would face due to separation from the applicant and no documentation has been submitted establishing the spouse's current income, expenses, assets, and liabilities or her overall financial situation. Thus there is insufficient evidence to establish that without the applicant's physical presence in the United States his spouse will experience financial hardship.

We find that the record fails to establish that the applicant's spouse will suffer extreme hardship as a consequence of being separated from the applicant. We recognize that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation if she remains in the United States is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship based on the record.

We also find the record fails to establish that the applicant's spouse would experience extreme hardship if she were to relocate to Ghana. The applicant cites medical conditions, economic hardship, and poor educational opportunities in Ghana that will affect his family, and states that conditions in Ghana cannot guarantee he will be able to support his family and they will not be able to live up to the standard they enjoy in the United States. However, neither the applicant nor his spouse has provided further explanation of any hardship to the spouse if she were to relocate to Ghana to reside with the applicant. The record contains 2011 and 2013 U.S. Department of State Country Reports on Human Rights Practices for Ghana, but these reports describe generalized country conditions related to human rights, and the record does not indicate how they specifically

affect the applicant's spouse. No other country conditions information has been submitted to the record. Thus the record fails to establish that the applicant's spouse would suffer extreme hardship if she were to relocate to Ghana.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. We therefore find that the applicant has failed to establish extreme hardship to his spouse as required under section 212(i) of the Act. 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 is dismissed.