



U.S. Citizenship  
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AUG 16 2005

FILE: [REDACTED]

Office: MIAMI, FL

Date: / /

IN RE: [REDACTED]

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Miami, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Cuba who 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 crimes involving moral turpitude (multiple convictions of petit and grand theft). The record indicates that the applicant has two U.S. citizen daughters. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The district director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated August 4, 2004.

On appeal, counsel asserts that the examiner did not weigh, analyze or balance the relevant factors and the applicant's children would suffer irreversible emotional damage by disrupting the family unit. *Letter in Support of Appeal*, undated. Counsel also requests that the matter be remanded to the district office for a new interview

The record contains the aforementioned letter, a psychosocial evaluation for the applicant's children and a previously submitted statement from the applicant. The entire record was reviewed and considered in arriving at a decision on the appeal.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

(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.

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

(h) The Attorney General [now, Secretary, 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 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 AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

Counsel states that the applicant was interviewed in a perfunctory manner in which the examiner had a predisposition to deny the case based on the applicant's past record without fully considering the effect on the applicant's children. *Supra*, at 1. Counsel states that the district director's decision contains 90% boiler plate language and this is evidence that the relevant factors were not weighed, analyzed or balanced. *See id.* at 2. Although the AAO cannot comment on the actual interview, the record does not support counsel's contentions. The only evidence included with the I-601 waiver was a very terse statement from the applicant that barely addressed the relevant factors of extreme hardship. Counsel states that the examiner failed to mention the effect on the applicant's children from an emotional and economic standpoint, however, the AAO notes that the burden is on the applicant to provide evidence of extreme hardship and the record presented to the examiner was nearly devoid of such evidence. Therefore, as the district director's decision was based on a sparse record, the relevant factors were addressed in a satisfactory manner. The AAO finds counsel's disparaging comments on the nature of the decision as lacking in merit. The AAO also notes that the district director erred in referring to the applicant's mother as relevant in the extreme hardship analysis. *See District Director's Decision*, at 4.

The function of the AAO is not to remand cases based on allegations of improper interviews, rather it is to review appeals based on the presented record. Counsel has submitted documentation in order to establish extreme hardship and an analysis of the record is appropriate.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a non-exclusive list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of lawful permanent resident or United States citizen family ties to 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.

The AAO notes that it can only base its decision on the record before it. There is no indication of lawful permanent resident or United States citizen family ties to the United States for the applicant's children other than each other. The record does not mention any family ties, if applicable, outside of the United States for the applicant's children. There is no evidence of the country conditions in Cuba, the impossibility of relocation to Cuba or the extent of the applicant's children's ties to Cuba. There is no evidence of the financial impact of departure from the United States other than the applicant's claim that he is the main provider for the family. *Letter from Applicant*, dated July 22, 2004. In regard to significant conditions of health, counsel submits a psychologist's letter which states that separation from the applicant will cause irreversible emotional damage to his children and that one of the daughters is under medical care for convulsions induced by high body temperatures. *See Psychosocial Evaluation*, dated January 17, 2005. The AAO notes that this is a one-time evaluation which is very brief, lacking in detail and does not indicate an ongoing relationship between the counselor and the children. The record does not include medical records for

the daughter or indicate whether her condition would become worse by separation from the applicant. There is no mention of the unavailability of suitable medical care in Cuba.

Therefore, based on the record, extreme hardship has not been shown in the event that a qualifying relative relocates to Cuba or in the event that the same qualifying relative remains in the United States.

U.S. court decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991). For example, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

A review of the documentation in the record, when considered in its totality reflects that the applicant has failed to show that a qualifying relative would suffer hardship that is unusual or beyond that which would normally be expected upon removal. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion. The AAO notes, however, that in the event extreme hardship were to be found, the applicant would still need to establish that the positive factors outweigh the significant negative factors, which include his egregious criminal record.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.