

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

PUBLIC COPY

H2

[Redacted]

FILE:

[Redacted]

Office: MIAMI, FL

Date: JUL 08 2005

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:

[Redacted]

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 Acting District Director, Miami, Florida. A subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reconsider. The motion will be granted and the previous decisions of the acting district director and the AAO will be affirmed.

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 a crime involving moral turpitude (aggravated battery and shooting or throwing deadly missile). The record indicates that the applicant has a U.S. citizen daughter. The applicant seeks a waiver of inadmissibility in order to reside with family in the United States.

The acting district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen daughter and the application was denied accordingly. *Acting District Director Decision*, dated August 28, 2001.

On motion, counsel asserts that the applicant's daughter would suffer "irreparable psychological damage" if separated from the applicant and that the applicant has met his burden to demonstrate extreme hardship to his U.S. citizen child. *Brief in Support of Appeal*, dated September 15, 2003.

The record contains previously submitted documents including a psychological report on the applicant's daughter and statements from the applicant, his spouse, his sister-in-law and his friends.

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.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of a 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.

In the initial AAO decision, the director stated that none of these factors was addressed by counsel on appeal. *AAO Decision*, dated August 25, 2003. Counsel very minimally addresses these factors in his motion to reconsider. The record does not include any evidence of the qualifying relative's lawful permanent resident or United States citizen family ties to the United States, family ties outside the United States, ties to the countries to which she would relocate, financial impact of departure from the United States or significant conditions of health and unavailability of suitable medical care in the countries to which the qualifying relative would relocate. Counsel briefly addresses the country conditions of Cuba by stating it is a communist dictatorship which is a state sponsor of terrorism. *Brief in Support of Appeal*. at 6. Other than this, there is no analysis of the factors in relation to Cuba. Counsel references the AAO decision's statement that the applicant's appeal did not address the hardship factors and subsequently refers to the statement prepared by the applicant's spouse. *See id.* However, the applicant's spouse's statement does not address any of the *Matter of Cervantes-Gonzalez* factors in her statement.

Counsel asserts that the AAO failed to give adequate consideration to the qualifying relative's psychological report, the psychological impact of the denial of the applicant's admission upon the qualifying relative must be considered in evaluating an application based on extreme hardship and the quality of the emotional connection between the applicant and his daughter is important. *See id.* at 3. Counsel cites several statements from the report that deal with the close bond between the applicant and his daughter, the potential negative behavioral effects of separation and the irreparable psychological damage she would suffer. *See id.* at 4. Counsel also references affidavits corroborating the psychologist's description of a very close father-child relationship. *See id.* at 7. These contentions are relevant in showing that the qualifying relative will encounter emotional difficulties if she is separated from her father, but this is only one aspect of extreme hardship analysis. Counsel does not establish extreme hardship to the daughter in the event she relocates to Cuba with him and counsel makes no contention regarding the impossibility of relocation to Cuba.

Counsel states that the applicant's spouse is a citizen of Ecuador and currently has a dependent adjustment of status case pending with the government. *Id.* at 6. Therefore, if the hardship waiver is not granted for the applicant, the family will be torn apart as the mother will be exiled to Ecuador and the applicant will be exiled to Cuba. *See id.* at 6-7. The AAO acknowledges that this is an unusual fact pattern and is sympathetic to the difficult situation of the qualifying relative. However, no evidence, other than the psychologist's report and the personal statements, has been presented that the applicant's daughter will suffer extreme hardship in the

event of separation from the applicant, whether she is separated from him by living in the United States or separated from him by relocating to Ecuador with her mother. There is nothing in the record to establish that the applicant could not relocate to Ecuador with his family, thereby maintaining family unity. In the event that the applicant can or cannot relocate to Ecuador and the applicant's daughter relocates to Ecuador, counsel fails to address the *Matter of Cervantes-Gonzalez* factors in regards to Ecuador as this is relevant to the analysis of this particular set of facts.

U.S. court decisions have additionally 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 his U.S. citizen daughter would suffer hardship that was 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.

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.