



U.S. Citizenship
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FILE: [REDACTED] Office: MIAMI DISTRICT OFFICE

Date: **OCT 19 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The District Director, Miami, denied the waiver application and certified his decision to the Administrative Appeals Office (AAO) for review. The district director's decision will be affirmed and the application denied.

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. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with her permanent resident son.

The district director concluded 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. *Decision of the District Director*, dated December 29, 2004.

On certification, the applicant contends that her permanent resident son will suffer hardship if she is prohibited from remaining in the United States, as her son is a minor and has no one else to care for him. *Applicant's Statement on Certification*, dated January 28, 2005.

The record contains a statement from the applicant in response to the director's certification; a letter from the applicant's prior counsel in support of the initial Form I-601, Application for Waiver of Ground of Excludability; a copy of the applicant's son's permanent resident card; a copy of the applicant's son's birth certificate; evidence of the applicant's employment in the United States; documentation of the applicant's son's school performance; a letter from a doctor discussing the health status of the applicant's son, and; documentation of the applicant's criminal history. The entire record was reviewed and considered in rendering this decision.

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

- (A)(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 [now the Secretary of Homeland Security

(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 record reflects that the applicant has been convicted of crimes involving moral turpitude. Specifically, on September 3, 2002 and July 2, 2003, the applicant was convicted of petit larceny (shoplifting) in Miami-Dade County, Florida. On September 3, 2002, the applicant was further convicted of contributing to the delinquency of a minor, as her minor son was present and under her care during her first instance of shoplifting. Accordingly, the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

The applicant contends that she did not commit the crimes for which she was convicted. However, the record contains official records of the applicant's convictions, including accounts of the actions in which she engaged that led to the convictions. The applicant has submitted no documentation to support that she was wrongly convicted, such as evidence that she appealed or contested the convictions, or documentation to show that a U.S. court has reassessed the convictions. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Thus, the applicant has not established that she was wrongly deemed inadmissible for committing crimes involving moral turpitude.

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. Section 212(h)(1)(B) of the Act. Hardship the applicant herself experiences upon being found inadmissible is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's permanent resident son. *Id.* If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) of the Act.

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 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.

On certification, the applicant contends that her permanent resident son will suffer hardship if she is prohibited from remaining in the United States, as her son is a minor and has no one else to care for him. *Applicant's Statement on Certification*, dated January 28, 2005. The applicant states that her son would become an orphan and would require public assistance if she departs the United States. *Id.* at 2. The applicant further provides that her son suffers from asthma and allergic rhinitis, which require nebulizer treatments and an air-conditioned environment. *Id.* at 3. The applicant provides a letter from her son's pediatrician, [REDACTED] in which [REDACTED] states that the applicant's son requires daily medication, nebulizer treatment, and a clean, air-conditioned environment. *Letter from* [REDACTED]

dated October 13, 2004. The applicant further suggests that her son would be deprived of educational opportunities if he returned to Cuba. *Id.*

Upon review, the applicant has not established that her son will suffer extreme hardship as a result of her inadmissibility. The applicant's son is a minor, and the applicant indicates that he has no other guardians or relatives in the United States who can or do provide support for him. Thus, it is assumed that he would depart the United States with the applicant should the applicant's application for a waiver be denied. However, the applicant has not shown that returning to Cuba will constitute extreme hardship to her son.

The applicant's son was born in Cuba on May 8, 1989 and did not enter the United States until July 19, 2001. Thus, as of the date the Form I-601 application was filed, February 27, 2004, the applicant's son had only resided in the United States for approximately three years. Therefore, returning to Cuba does not pose difficulties for the applicant's son that one might experience when adjusting to a new country or culture. The AAO acknowledges that the applicant's son would like to avail himself of the advantages of permanent residence in the United States, such as educational opportunities. However, the applicant has not established that her son would lack the ability to obtain education in Cuba.¹

The applicant indicates that her son requires medication, nebulizer treatments, and an air-conditioned environment to properly care for his asthma and allergic rhinitis. However, the applicant has not shown that her son will be unable to receive appropriate medication or treatment in Cuba, or that he will be compelled to reside in an environment that is detrimental to his health. While the pediatrician for the applicant's son attests to the diagnosis of asthma and allergic rhinitis in a single, brief letter, the record lacks documentation that the applicant's son in fact receives ongoing treatment and medical care. Again, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165.

The applicant states that conditions in Cuba are poor. The AAO acknowledges that the government of Cuba engages in documented human rights violations. However, the record does not show that the applicant would be singled out or subjected to harms as a result of returning to Cuba from the United States. The applicant has not claimed that she anticipates encountering difficulties with government authorities should she return to Cuba. It is noted that the applicant was issued a Cuban passport on November 7, 2003, at a time when she was in the United States. This suggests that the applicant is in favor with the government of Cuba. Thus, the record does not show that the applicant's son would experience harm as a result of returning to Cuba from the United States.

The hardships that the applicant's son would face if he should return to Cuba do not go beyond those which are commonly experienced by the families of aliens deemed inadmissible. U.S. court decisions have held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v.*

¹ It is noted that the applicant's son will not lose his permanent residence status by departing the United States with the applicant. As he is age 16 as of the date of this decision, he may be eligible to reenter the United States as a permanent resident once he reaches the age of majority and can care for himself, particularly if he obtains a Reentry Permit by filing a Form I-131, Application for Travel Document, with the appropriate Citizenship and Immigration Services (CIS) office.

INS, 927 F.2d 465, 468 (9th 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 (9th 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.

The applicant notes the director's comment that it is unlikely that the applicant would actually be deported if her application for a waiver is denied. The applicant asserts that the director should not base his decision on an assumption that the applicant will not be compelled to depart the United States if she is not afforded a waiver. The AAO agrees that whether or not the applicant will in fact be deported is not a consideration in these proceedings. Hardship to the applicant's son must be evaluated in light of the possibility that the applicant would be compelled to depart the United States as a result of the denial of her waiver application. The director's comment in this regard will be withdrawn.

It is noted that the director indicated that he balanced positive factors and negative factors in reaching his decision, and that the waiver application was denied as a matter of discretion. The director further found that the applicant failed to establish that extreme hardship would result for a qualifying relative if her application was denied. However, pursuant to section 212(h)(1)(B) of the Act, CIS does not have the discretion to approve or deny a waiver application under section 212(h) of the Act unless the applicant first establishes that a qualifying relative will suffer extreme hardship. In the present matter, as the applicant failed to show that her son will endure extreme hardship as a result of her inadmissibility, her waiver application is denied for failing show extreme hardship to a qualifying relative. Having found the applicant statutorily ineligible for relief, no purpose is served in discussing whether she 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. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the district director's decision is affirmed.

ORDER: The district director's decision is affirmed and the waiver application is denied.