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U.S. Citizenship
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IN RE:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Miami, Florida, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

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 committed a crime involving moral turpitude. The applicant is the son of a permanent resident father. He seeks a waiver of inadmissibility under section 212(h) of the Act to remain in the United States with his father.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on qualifying relatives, and denied the Application for Waiver of Excludability (Form I-601). *Decision of the District Director*, dated July 5, 2005.

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 of the Act provides, in pertinent part:

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(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 record reflects that on October 8, 1991, the applicant pleaded *nolo contendere* to aggravated battery in

violation of [REDACTED] The district director found that the applicant committed a crime involving moral turpitude, and was therefore inadmissible under the Act. The applicant filed a waiver of inadmissibility in accordance with section 212(h) of the Act; the director determined the 212(h) waiver failed to establish extreme hardship to his parents, a statutory requirement of the waiver.

On appeal, counsel does not dispute the director's finding of inadmissibility based on the applicant's conviction of a crime of moral turpitude. She asserts, however, that the applicant met the burden of proving that his denial of admission would result in extreme hardship to his parents. Counsel distinguishes the facts and legal propositions in *Matter of Kim*, 15 I&N Dec. 88 (BIA 1974) and *Matter of Marques*, 15 I&N Dec. 200 (BIA 1975) from the instant case. According to counsel, those cases involve children and the educational and economic advantages of living in the United States; the case here involves elderly parents who would never adjust to life in Cuba. Counsel submits an Amnesty International Report of Cuba in support of her assertion. Counsel states that the applicant's parents are elderly, suffer from serious medical conditions, and rely solely on the applicant as a care giver and for financial assistance. The applicant takes his 78-year-old father to the doctor and ensures that his medical conditions are taken care of and monitored, counsel states. Counsel asserts that without his son, the applicant's father would not be taken care of. If the applicant is deported, counsel indicates that his father would have to come with him to Cuba, a country with scarce resources and medication. She states that based on the hardship factors set forth in *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978) the applicant has established that his denial of admission would cause extreme hardship to his parents.

The AAO will address in this proceeding whether the applicant has established that he should be granted a waiver of inadmissibility under section 212(h) of the Act. The entire record has been reviewed in rendering this decision.

Section 212(h)(1)(A) of the Act provides a waiver for the crime involving moral turpitude if the crime for which the applicant was found inadmissible occurred more than 15 years prior to the applicant's application for a visa; the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States; and the alien has been rehabilitated. Here, the applicant's crime involving moral for which he was found inadmissible occurred more than 15 years prior to his application for a visa. It was on October 8, 1991 that the applicant pleaded *nolo contendere* to aggravated battery in violation of Fla. Stat. Ann. Section 784.045(1)(b). The record does not indicate that the admission to the United States of the applicant would be contrary to the national welfare, safety, or security of the United States. However, the record does not contain sufficient evidence to establish that the applicant has been rehabilitated. There is no current FBI record without further convictions, documentation of work or tax history, or letters of recommendation. In the absence of this evidence, the applicant fails to establish that he has been rehabilitated as required by the Act.

Section 212(h)(1)(B) of the Act provides that a waiver of the bar to admission resulting from inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Only where there is great actual or prospective injury to the qualifying relative(s) will the bar be removed. "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

U. S. courts have stated, "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted). Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO will now apply the *Cervantes-Gonzalez* factors to the present case to the extent they are relevant in determining extreme hardship to the applicant's father. It is noted that extreme hardship to his father must be established in the event that he accompanies the applicant; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record contains medical documents pertaining to the applicant's mother, who died due to health reasons on December 12, 2004; an Amnesty International Report, which covers events in Cuba from January to December 2002; and a report from the U.S. Department of State, covering events in Cuba in 2004. The Amnesty International Report discusses political events in Cuba. The U.S. Department of State report, on page 12, indicates that the national health care system covered all citizens, and that facilities were deteriorated and basic medicines were often impossible to find. The report, on page 15, states that the Cuban government rations most basic necessities such as food, medicine, clothing, and cooking gas. The record also contains an affidavit, notarized on December 20, 2001, from the applicant's mother. In the affidavit, the applicant's mother states that the applicant lives with her and her husband and is the only person who takes care of them; that he takes them to doctor's appointments and ensures that she has a proper diet; that all of their family

resides in the United States; that their son has not been in trouble with the law since 1992; and that he has no place to go to in Cuba.

A review of the documentation in the record, when considered individually and in the aggregate, reflects that the applicant has not demonstrated statutory eligibility for waiver of admissibility under section 212(h) of the Act.

The evidence in the record does not establish extreme emotional hardship to the applicant's father if he remains in the United States. The Form I-601 reflects that the applicant has two sisters and that one of the sisters, who is a permanent resident, lives with the applicant and his father. The letter from the applicant's mother indicates that the applicant is the only person taking care of them. However, none of the medical documents in the record convey that the applicant's father has serious medical problems and no evidence indicates that the daughter who lives with the father is not in a position to assist with his medical needs, if any. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

The AAO is not unsympathetic to the emotional hardship that the applicant's father will endure if separated from him. However, his father's situation, if he remains in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship, based on the record. In *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Court of Appeals upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS*, 638 F.2d 1199, 1206 (9th Cir. 1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *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. The record before the AAO is insufficient to show that the emotional hardship endured by the applicant's father is unusual or beyond that which is normally to be expected upon deportation.

The record does not establish that the applicant's father would endure extreme economic hardship if the waiver of inadmissibility is not granted. Counsel states that the applicant is the sole financial supporter of his father. No evidence, however, substantiates that he is required to financially assist his father. There are no documents in the record pertaining to the income and household expenses of the applicant's father or of the applicant's financial contributions towards those household expenses. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

The AAO finds that the applicant's father would suffer extreme hardship if he joined the applicant in Cuba. The applicant's mother stated that they have no family ties in Cuba; therefore, no support system awaits the applicant's father in Cuba. Although the record does not establish that the applicant's father suffers from

serious health problems, given his advanced age, the AAO finds that there is a strong likelihood that he will require medical attention in the near future. Such attention may not be available in Cuba, based on the U.S. State Department report reflecting that food and medicine is rationed in Cuba, medical facilities are deteriorated, and basic medicines are often impossible to find. Thus, there is an unavailability of suitable medical care in the country to which the applicant's father would relocate. No evidence in the record suggests how the applicant's father will be financially supported in Cuba. The Forms I-485 and G-325 indicate that the applicant is disabled. Based on the circumstances in this particular case, the AAO finds that the applicant's father would endure extreme hardship if he joins the applicant to live in Cuba.

In the final analysis, however, the record does not establish that the applicant's father would endure extreme hardship if he remained in the United States with his daughter. It is noted that extreme hardship to the applicant's father must be established in the event that he accompanies the applicant; and in the alternative, that he remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

Consequently, the requirement of significant hardships over and above the normal economic and social disruptions involved in deportation has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors, both individually and in the aggregate, it is concluded that the factors in this case do not constitute extreme hardship to a qualifying family member for purposes of relief under 212(h) of the Act. The record is insufficient to prove that the applicant's father would endure extreme hardship if he remains in the United States.

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(a)(2)(A) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.