



U.S. Citizenship  
and Immigration  
Services

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

H2

JUN 21 2007

FILE:

Office: CALIFORNIA SERVICE CENTER Date:

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, 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 [REDACTED] 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 husband of a lawful permanent resident wife, [REDACTED] and the father of a U.S. citizen child and a lawful permanent resident stepchild. He seeks a waiver of inadmissibility under section 212(h) of the Act.

The director concluded that the applicant failed to establish extreme hardship would be imposed on qualifying relatives, and denied the Application for Waiver of Excludability (Form I-601). *Decision of the Director*, dated May 1, 2006.

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.

The record reflects that a plea of guilty was entered against the applicant to the offense of grand theft third degree 300-5K on June 11, 1998. Thus, the director correctly found that the applicant committed a crime involving moral turpitude and was inadmissible under the Act.

On appeal, counsel does not dispute the director's finding of inadmissibility based on the applicant's conviction of a crime of moral turpitude. Counsel refers to affidavits and an authorization card to establish that [REDACTED] is involved in his stepdaughter's life. Counsel also refers to documents from Citrus Health Network to demonstrate that the applicant's stepdaughter is concerned about losing her father and has had problems in school and treatment with mental health providers. Counsel asserts that the girl is destabilizing under the fear of losing yet another father and that this extremeness is more than the common hardship of separation.

Section 212(h) 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 -

...

- (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 will now address the director's denial of the waiver application.

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a permissible consideration under the statute and will be considered here only to the extent that it results in hardship to a qualifying relative. The qualifying relative here is the applicant's wife and his child and stepchild. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

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 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).

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 wife and children. It is noted that extreme hardship to the applicant's qualifying relative must be established in the event that he or she accompanies the applicant; and in the alternative, that he or she 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 applicant married the petitioner on April 26, 2004. *DH Form 743*. The record contains birth certificates of the applicant's American-born child, [REDACTED] born on November 19, 2001; and [REDACTED] his stepdaughter, born on March 9, 1995.

The record contains two affidavits, one from the applicant's father and the other from his stepmother. The affidavit from the applicant's father states the following. [REDACTED] is very good with [REDACTED] trying to please her. [REDACTED] is involved in many of [REDACTED] activities such as taking her to and picking her up from school every day. At this time [REDACTED] knows the situation and is sad; I see a change in her. She asks [REDACTED] why things have to be this way. [REDACTED] called my son daddy since she was little.

The affidavit from the applicant's stepmother states the following. [REDACTED] is very good with Greys; she is very important to him, which is reflected in the things he does for her, always trying to please her, and taking her everywhere. There is nothing [REDACTED] asks for that he does not provide. [REDACTED] will suffer so much if [REDACTED] her father figure, is taken away. For [REDACTED] is the only father she has had since she was about a year old. [REDACTED] will suffer psychologically and in everyday life; she has suffered so much already, it does not seem just. They always go to the park and to the movies together when [REDACTED] gets home from work; he really is her father.

The record contains an evaluation of [REDACTED] from her teacher and student data cards. It also contains bank statements.

The psychiatric evaluation, dated May 11, 2006, by a physician with Citrus Health Network, Inc. states the following about [REDACTED]. [REDACTED] reports that she has been feeling sad as she is afraid that her stepfather might have to leave and she says this is the second home she will be leaving her father as her parents were divorced when she was younger. [REDACTED] had been seen by [REDACTED] on October 2, 2002 and was diagnosed with ADHD, combined type and was prescribed medication (Concerta 36 mg) and she benefited from the medication with no side effects. The patient last took medication in August 2005 and this was the date the patient was last seen by [REDACTED] and she had not had to take any medication at this time. [REDACTED] wishes for her stepfather not to leave the country. [REDACTED] mother has a history of depressive symptoms.

The psychiatric evaluation, dated October 2, 2002, by [REDACTED], a physician with Citrus Health Network, Inc. states the following about [REDACTED]. [REDACTED] mother states that for the last year [REDACTED] has been having difficulty in second grade. She has been hyperactive, does not pay attention, does not listen or follow instructions, fidgets and has difficulty sustaining attention. In kindergarten she also had difficulty, and the mother did not list to the teacher's concern. Mother admits she has been depressed but has not had a formal evaluation. [REDACTED] will be started on medication and will return to the clinic in two weeks.

Counsel indicates that the applicant and his sister contribute to the support of his father and stepmother and that the applicant is the main breadwinner in his household as shown by submitted bank statements. *Memorandum of Law in Support of Applicant's Adjustment of Status and I-601 Waiver.* Counsel states that [REDACTED] father contributes no child support. *Id.* According to counsel, [REDACTED] is described as destructive, hyper active and has needed psychotherapy services. *Id.* Counsel asserts that the impact of her natural father abandoning [REDACTED] at such a young age has made an impact on her and if the only father she knows is taken from her then the severe emotional as well as psychological impact would be crippling. *Id.* Counsel states that [REDACTED] mother has bouts of depression. *Id.* The hardship that the applicant's family would endure in Cuba cannot be calculated, counsel states. *Id.* According to counsel, separation of family constitutes hardship. *Id.*

The record contains documents relating to efforts by the State Attorney's Office to collect child support from Greys' natural father. *Recommended Order On: Motion for Contempt & Motion to Disburse Bond; Affidavit of the Custodial Parent Regarding Child Support Arrears Owed; Affidavit and Request for Participation in Central Depository Payment Program; Writ of Bodily Attachment; Recommended Order On: Motion for Contempt,* in addition to other documents.

The record contains a letter in which the applicant states that he and his sister have been providing financial assistance to his father and stepmother. *Letter from applicant, dated October 19, 2004.*

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 record does not establish that the applicant's family would endure extreme economic hardship if the waiver of inadmissibility is not granted and they remain in the United States. It is noted that the furnished evidence does not depict the household expenses of the [REDACTED] family. The submitted bank statements reflect that [REDACTED] is employed with A-1 Professional. The applicant's Form G-325 indicates that he is employed with Experto Autoglass; however, the AAO cannot determine his earnings from the submitted bank statements. Thus, the evidence provided is not sufficient to show that [REDACTED]'s earnings are inadequate to meet monthly household expenses. Furthermore, the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981).

U. S. courts have stated that "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).

However, the fact that the applicant has an American-born child and a lawful permanent resident stepdaughter is not sufficient in itself to establish extreme hardship. The general proposition is that the mere birth of a deportee's child who is a U.S. citizen is not sufficient to prove extreme hardship. The BIA has held that birth of a U.S. citizen child is not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Marquez-Medina v. INS*, 765 F.2d 673 (7th Cir. 1985), the Seventh Circuit has stated that an illegal alien cannot gain a favored status merely by the birth of a citizen child. The Ninth Circuit has found that an alien illegally present in the United States cannot gain a favored status merely by the birth of his citizen child. *Lee v. INS*, 550 F.2d 554 (9th Cir. 1977). In a per curiam decision, *Banks v. INS*, 594 F.2d 760 (9th Cir. 1979), the Ninth Circuit found that an alien, illegally within this country, cannot gain a favored status on the coattails of his (or her) child who happens to have been born in this country.

Furthermore, in *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit 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.

Counsel asserts that separation from family constitutes hardship. According to counsel, [REDACTED] has been impacted by her natural father abandoning her, and if the only father she knows, [REDACTED] is taken from her then the severe emotional and psychological impact would be crippling.

The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. It has taken this into consideration with the [REDACTED] family. However, it finds that the situation of the applicant's wife and children, if they remain 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. The record before the AAO is insufficient to show that the emotional hardship that will be endured by the [REDACTED] family, while separated from the applicant, is unusual or beyond that which is normally to be expected upon deportation. The record indicates that [REDACTED] has an attention deficit disorder. It also indicates that she last took medication and was last seen by [REDACTED] for the disorder in August 2005; it shows that [REDACTED] has not had to take any medication at this time. The letters from the applicant's father and stepmother indicate that the applicant spends time with [REDACTED]. However, evidence of [REDACTED] attention deficit disorder and her relationship with her stepfather is insufficient to demonstrate that separating her from the applicant will cause her to endure a severe emotional and psychological impact. 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 has not established that his family would suffer extreme hardship if they joined him in Cuba.

The conditions of Cuba, the country to which the [REDACTED] family will join the applicant, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted).

A significant reduction in the standard of living is not by itself a ground for relief. *Ramirez-Durazo v. INS*, 794 F.2d 491 (9th Cir. 1986). Economic hardship claims of not finding employment in Mexico and not having proper medical care benefits do not reach the level of extreme hardship. *Marquez-Medina v. INS*, 765 F.2d 673, 677 (7th Cir. 1985). "Second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa*, 19 I&N Dec. 130 (BIA 1984). In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), the Ninth Circuit upheld the BIA's finding that hardship in finding employment in Mexico and in the loss of group medical insurance did not reach "extreme hardship."

However, in *Carrete-Michel v. INS*, 749 F.2d 490, 493 (8th Cir. 1984), the court stated that the BIA improperly characterized as mere "economic hardship" [REDACTED] claim, which was supported by evidentiary material, that he would be completely unable to find work in Mexico. The court stated:

Although economic hardship by itself cannot be the basis for suspending deportation, *Immigration and Naturalization Service v. Wang*, 450 U.S. at 144, 101 S.Ct. at 1031, we

agree with the Ninth Circuit that there is a distinction between economic hardship and complete inability to find work. *Santana-Figueroa*, 644 F.2d at 1356-57.”

In the case at hand, [REDACTED] makes no claim of economic hardship stemming from an inability to find any work in Cuba. There is no hardship claim arising from significant conditions of health to a member of the [REDACTED] family. Moreover, the most recent psychiatric report concerning [REDACTED] indicates that she no longer takes medication and has not seen a mental health professional since August 2005.

[REDACTED] is five years old and [REDACTED] is 12 years old. In *Ramirez-Durazo*, *supra* at 498, the Ninth Circuit stated that “[t]he disadvantage of reduced educational opportunities for the children was also considered by the BIA and found insufficient to establish “extreme hardship.” It also stated that “[a]lthough the citizen child may share the inconvenience of readjustment and reduced educational opportunities in Mexico, this does not constitute “extreme hardship.” In *Banks v. INS*, 594 F.2d 760, 762 (9th Cir. 1979), the Ninth Circuit states that “[w]hile changing schools and the language of instruction will admittedly be difficult, [REDACTED] herself admitted that [REDACTED] would be able to learn the German language. The possibility of inconvenience to the citizen child is not itself sufficient to constitute extreme hardship under the statute.”

Here, there is no evidence that [REDACTED] and [REDACTED] will not be able to transition to life in Cuba.

The record reflects that the [REDACTED] family would sever ties with family members if they joined the applicant in Cuba. The BIA in *Matter of Shaughnessy*, 12 I & N Dec. 810, 813 (BIA 1968) stated that separation from family does not constitute extreme hardship unless combined with more extreme impact.

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

In the final analysis, the AAO finds that 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 raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v).

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.