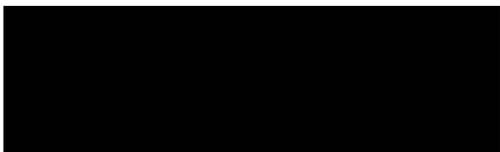


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FILE: [REDACTED] Office: MIAMI, FL Date:

APR 10 2008

IN RE: [REDACTED]

PETITION: 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 PETITIONER:

SELF-REPRESENTED

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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
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 applicant is a native and citizen of Cuba who was found to be inadmissible to the United States under 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. The applicant is the spouse of a lawful permanent resident. He now seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse.

The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated November 20, 2007.

On appeal, the applicant seeks to establish that he met the burden of establishing extreme hardship to his qualifying relative necessary for a waiver under 212(h) of the Act. *Form I-290B*.

The record includes, but is not limited to, a statement from the applicant's spouse; statements from the applicant's friends; statements from the applicant; criminal records for the applicant; and an employment letter for the applicant. The entire record was considered in rendering a decision on the appeal.

The applicant has the following criminal history. On July 19, 1995 the applicant was found guilty of battery on a law enforcement officer and two counts of resisting an officer with violence. *Criminal records, Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida*. On February 2, 1998 the applicant was convicted of battery on a law enforcement officer and resisting an officer with violence. *Criminal records, Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida*, dated February 19, 1998. On September 3, 2002 adjudication was withheld for the charge of petit larceny, theft. *Court record printout, Circuit and County Courts of the Eleventh Judicial Circuit, Miami-Dade County, Florida*. The AAO notes that a withheld adjudication constitutes a conviction for immigration purposes. The AAO also notes that the record includes information on additional arrests where the charges were dismissed.

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

- (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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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 . . .

In *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), the Board of Immigration Appeals (Board) held that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general.

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.) Neither the seriousness of the criminal offense nor the severity of the sentence imposed is determinative of whether a crime involves moral turpitude. *Matter of Serna*, 20 I&N Dec. 579, 581 (BIA 1992). Before one can be convicted of a crime of moral turpitude, the statute in question by its terms, must necessarily involve moral turpitude. *Matter of Esfandiary*, 16 I&N Dec. 659 (BIA 1979); *Matter of L-V-C*, 22 I&N Dec. 594, 603 (BIA 1999).

The printout of the court record included in the applicant's file does not specify the Florida statute under which the applicant was convicted for petit larceny, theft. *Court record printout, Circuit and County Courts of the Eleventh Judicial Circuit, Miami-Dade County, Florida*. The AAO notes, however, that the applicant was also twice convicted under Florida statutes 784.03 for battery on a law enforcement officer and 843.01 for resisting an officer with violence. The Board found in *Matter of O-* that the offense of "resisting an official" during an arrest did not involve moral turpitude because the statute under which the appellant was convicted required no specific intent. 4 I&N Dec. 301 (BIA 1951). The AAO finds the applicant's case to be distinguished from *Matter of O-*, as the applicant was convicted under Florida statute 843.01 which has an intent element. The AAO therefore finds that a conviction under this section constitutes a crime involving moral turpitude, as knowledge is an element of the crime. See *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992). As such, the AAO finds that the applicant has committed a crime involving moral turpitude and is thus inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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. The plain language of the statute indicates that hardship that the applicant himself would experience upon removal is not directly relevant to the

determination as to whether the applicant is eligible for a waiver under section 212(h). The only relevant hardship in the present case is hardship suffered by the applicant's spouse if the applicant is removed. If 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).

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 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 extreme hardship to the applicant's spouse must be established in the event that she resides in Cuba or the United States, as she is not required to reside outside of the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

If the applicant's spouse travels with the applicant to Cuba, the applicant needs to establish that his spouse will suffer extreme hardship. The record fails to address or include any documentation as to how the applicant's spouse would be affected if she traveled with the applicant to Cuba or whether the applicant's spouse would be allowed to travel to Cuba. As such, the AAO does not find that the applicant has established that his spouse would suffer extreme hardship if she were to relocate to Cuba.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The applicant's spouse has a son from a previous relationship who is in the United States. *Statement from the applicant's spouse*, dated November 15, 2005. The applicant's spouse states that although she works, her earnings are minimal and the applicant has always been the main provider for the family. *Id.* The AAO notes that the record fails to include earnings statements to support the assertions made by the applicant's spouse. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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)). Furthermore, there is nothing in the record that demonstrates that the applicant would be unable to contribute to his family's financial well-being from a location outside the United States. The applicant's spouse states that she loves the applicant dearly. *Statement from the applicant's spouse*, dated November 15, 2005. She notes that they only have each other. *Id.* The applicant states that he is happily married and loves his wife very much. *Statement from the applicant*, dated October (no year specified).

U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. 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 AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of deportation or exclusion. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A)(i)(I) 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 appeal will be dismissed.

ORDER: The appeal is dismissed.