

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H₂

FILE:

Office: CALIFORNIA SERVICE CENTER

Date APR 23 2008

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:

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 black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, 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 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. 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.

The 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 Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated April 28, 2006.

On appeal, the applicant's U.S. citizen wife contends that she and the applicant's U.S. citizen daughter will experience extreme hardship should the applicant be prohibited from remaining in the United States. *Statement from Applicant's Wife*, May 17, 2006.

The record contains statements from the applicant and his wife; a copy of the applicant's marriage certificate; a copy of the applicant's wife's birth certificate; a copy of the applicant's daughter's birth certificate; documentation relating to the applicant's criminal conviction; a copy of the applicant's birth certificate, and; a copy of the applicant's baptismal certificate. The entire record was reviewed and considered in rendering this decision.

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) [or] (B) . . . 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 was convicted of Burglary under Florida Statutes Title XLVI § 810.02, for which he received a six month sentence. Accordingly, the applicant was found inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The applicant does not contest his inadmissibility on appeal.

The AAO notes that section 212(h)(1)(B) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes extreme hardship on a qualifying family member. Hardship the applicant himself experiences due to his inadmissibility is not a direct concern in section 212(h)

waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen wife and daughter. *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.

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

On appeal, the applicant's wife contends that she and the applicant's daughter will experience extreme hardship should the applicant be prohibited remaining in the United States. *Statement from Applicant's Wife*, May 17, 2006. She indicated that the applicant is the sole provider of their family while she is on maternity leave. *Id.* She explained that the applicant has two jobs, and that their household would be in debt if he is unable to provide financial support. *Id.* She asserted that she and the applicant's daughter would have to apply for government assistance should the present waiver application be denied. *Id.* The applicant's wife further expressed that she and the applicant's daughter would experience emotional hardship if they are separated from the applicant. *Id.*

The applicant's wife lauded the applicant's character and remarked on his remorse for his criminal activity. *Id.* at 1. She expressed that the applicant would experience hardship should he return to Cuba, including a lack of employment, cultural isolation, and possible imprisonment. *Id.*

Upon review, the applicant has failed to show that his wife or daughter will suffer extreme hardship should he be prohibited from remaining in the United States. The applicant's wife indicated that the applicant is the sole provider of their family while she is on maternity leave, and that their household would be in debt if he is unable to provide financial support. However, the applicant has not provided any documentation to serve as evidence of his employment. Nor has the applicant provided an accounting of his household's regular expenses, his wife's employment or income, or his savings or other financial resources. The applicant's wife provided that she is on maternity leave, yet she did not explain whether or when she will return to work, or whether she is currently receiving payments from an employer while on leave. Thus, the applicant has not submitted sufficient evidence to show that his wife or child would experience serious economic hardship in his absence.

The applicant's wife indicated that she and the applicant's daughter would experience emotional hardship if separated from the applicant. However, the applicant has not submitted sufficient documentation or explanation to show that his wife's or daughter's emotional hardship would go beyond that which is 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. 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's wife expressed that the applicant would experience hardship should he return to Cuba, including a lack of employment, cultural isolation, and possible imprisonment. However, hardship to the applicant is not a direct concern in the present waiver proceeding. Section 212(h) of the Act. The AAO acknowledges that the applicant could face significant challenges should he return to Cuba, yet he has not shown that his difficulties would elevate his wife's or daughter's hardship to extreme hardship.

Based on the foregoing, the applicant has not shown that, should he be prohibited from remaining in the United States, his family members will suffer hardship that is unusual or beyond that which would normally be expected upon the deportation of a family member. Thus, the documentation in the record fails to establish the existence of extreme hardship to the applicant's wife or daughter caused by the applicant's inadmissibility to 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(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 appeal will be dismissed.

ORDER: The appeal is dismissed.