

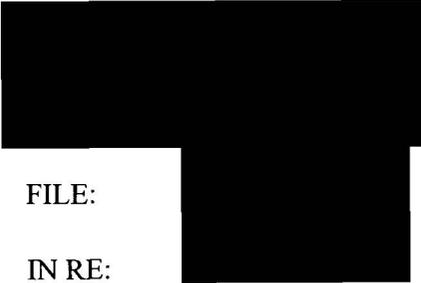
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U.S. Citizenship  
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DEC 11 2008

FILE:

Office: MIAMI, FL

Date:

IN RE:

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting 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 son of a lawful permanent resident. He now seeks a waiver of inadmissibility so that he may reside in the United States with his mother.

The Acting 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. She further found the applicant to be ineligible for a waiver as a matter of discretion. *Decision of the Acting District Director*, dated June 5, 2006.

On appeal, the applicant contends that Citizenship and Immigration Services (CIS) erred in finding that the applicant had failed to meet the burden of establishing extreme hardship to his qualifying relative as necessary for a waiver. *Form I-290B; Attorney's brief*.

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, criminal court documents; and a statement from the applicant's mother. The entire record was considered in rendering a decision on the appeal.

The applicant has the following criminal history. The applicant was convicted in Cuba of robbery with forced entry, which he committed on September 16, 1977. *Sworn Statement in Exclusion Proceedings*, dated June 17, 1980. He received a 15 year sentence, of which he served 2.5 years. *Id.* On August 31, 1982, the applicant was convicted of Grand Theft under Florida Statute § 812.014, with adjudication withheld.<sup>1</sup> *Court records, Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida.* The applicant received a sentence of 18 months probation. *Id.* On March 17, 1986 the applicant was convicted of Loitering and Prowling. *Court records, Circuit and County Courts of the Eleventh Judicial Circuit of Florida, in and for Miami-Dade County.* He was fined \$500 and required to perform 100 hours of community service. *Court records, Criminal Division, County Court, Miami, Florida.* On September 8, 1989 the applicant was convicted of Grand Theft in the Third Degree under Florida Statute § 812.014(1)(2)(c). *Judgment, Circuit Court Eleventh*

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<sup>1</sup> Section 101(a)(48) of the Act states that:

The term "conviction" means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—

- (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and
- (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

*Judicial Circuit, in and for Dade County, Florida.* He received a sentence of one day confinement. *Id.* On June 14, 1990 the applicant was convicted of Loitering for which he received probation. *Court records, Circuit and County Courts of the Eleventh Judicial Circuit of Florida, in and for Miami-Dade County.* On December 16, 1994 the applicant was convicted of Grand Theft in the Third Degree under Florida Statute § 812.014(1)(2)(c) for which he received probation for one year. *Id.; Order of Probation, Circuit Court of the Eleventh Judicial Circuit, in and for Dade County, Florida.* The applicant subsequently violated his probation resulting in the modification of his probation on February 21, 1995. *Court records, Circuit and County Courts of the Eleventh Judicial Circuit of Florida, in and for Miami-Dade County.*

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 -
  - (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 . . .

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. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

Prior to addressing whether the applicant qualifies for a section 212(h) waiver, the AAO finds it necessary to address the issue of inadmissibility. The applicant was convicted under Florida Statute § 812.014(1)(2)(c) which reads in pertinent part:

- (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently...
  - (a) Deprive the other person of a right to the property or a benefit from the property.
  - (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

Under *Matter of Grazley*, the Board found that ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended. 14 I. & N. Dec. 330 (BIA 1973). As the statute involves some offenses which do involve moral turpitude and others which do not, it is treated as a “divisible” statute. *Id.* Therefore it is permissible to look beyond the statute to consider such facts as may appear in the record of conviction to determine whether the conviction was rendered under the portion of the statute dealing with crimes that do involve moral turpitude. *Id.* The record of conviction includes the charge (indictment or information), plea, verdict and sentence. *Zaffarano v. Corsi*, 63 F.2d 757 (2d Cir. 1933). In the present case, the record includes an Information regarding the applicant’s May 20, 1982 arrest for Grand Theft, on which adjudication was subsequently withheld. *Information, Circuit Court of the Eleventh Judicial Circuit, in and for Dade County; Court records, Circuit Court of the Eleventh Judicial Circuit of Florida, in and for Dade County, Florida.* According to the Information, the applicant did knowingly, unlawfully and feloniously obtain or use, or did knowingly, unlawfully and feloniously endeavor to obtain or to use a Motor Vehicle, with the intent to permanently deprive. *Information, Circuit Court of the Eleventh Judicial Circuit, in and for Dade County.* As such, the AAO finds that the applicant’s 1982 withheld adjudication for Grand Theft constitutes a crime involving moral turpitude.

The AAO notes that the record before it does not indicate whether a temporary or permanent taking was intended in the applicant’s other convictions for Grand Theft. However, it also observes that it is the applicant’s burden under section 291 of the Act to establish his admissibility and that the applicant has not submitted the complete records of conviction for his other crimes, thereby allowing the AAO to determine whether or not they constitute crimes involving moral turpitude. As the applicant has not established that his other theft convictions are not crimes involving moral turpitude, the AAO finds the applicant to be inadmissible under section 212(a)(2)(A) of the Act for having committed crimes of moral turpitude.

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 mother must be established in the event that his mother resides in Cuba or the United States, as his mother is not required to reside outside 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 mother joins the applicant in Cuba, the applicant needs to establish that his mother will suffer extreme hardship. The applicant's mother was born in Cuba. *Form G-325A, Biographic Information sheet, for the applicant*. The record does not show what family ties the applicant's mother may have in Cuba. There is nothing in the record to document whether the applicant's mother is permitted to return to Cuba, whether she has attempted to return to Cuba and what the outcome was, and if she has visited Cuba, the date of her most recent trip. Although counsel points to the psychological impacts of the denial of the applicant's waiver request on his mother, counsel fails to indicate what those impacts would be or to document them with an evaluation from a licensed healthcare professional. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). In his brief, counsel also makes reference to the lack of family ties and adequate medical attention in the Philippines, as well as the absence of employment opportunities there. However, the applicant must establish that his mother will suffer extreme hardship if she relocates to Cuba, not the Philippines. Accordingly, the AAO will not consider counsel's statements regarding the lack of family ties and poor conditions in the Philippines. *Attorney's brie*. When looking at the aforementioned factors, the AAO does not find that the applicant had demonstrated extreme hardship to his mother if she were to reside in Cuba.

If the applicant's mother resides in the United States, the applicant needs to establish that his mother will suffer extreme hardship. The applicant's mother states that the applicant is the head of her household, as she and her daughter do not work. *Statement from the applicant's mother*, dated June 7, 2001. She further asserts that the applicant pays for all of the household expenses and gives her money to support her daughter and herself. *Id*. She does not have any other source of income. *Id*. While the AAO acknowledges these statements, it notes that the record fails to provide documentary evidence in support of her claims, such as bills documenting various expenses, an employment letter for the applicant, earnings statements and W-2 Forms for the applicant, or tax statements for the applicant. 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 other than the United States. Moreover, while the AAO notes the statements of the applicant's mother, it observes that economic detriment by itself does not establish extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996).

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). *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 mother 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 individuals separated as a result of removal and therefore, it does not 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 mother 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 an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

**ORDER:** The appeal is dismissed.