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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]

Office: MIAMI, FLORIDA

Date: MAY 21 2008

IN RE: [REDACTED]

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 District Director, Miami (Tampa Sub-Office), Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of Mexico 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 crimes involving moral turpitude (petit theft and uttering a forged instrument). The record indicates that the applicant's father is a U.S. citizen. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The district director concluded that the applicant had 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. *District Director's Decision*, dated January 6, 2005.

On appeal, the applicant states that his family is in the United States, he has no business in Mexico, he disagrees that he is inadmissible and the Board of Immigration Appeals (BIA) decision that he submitted applies to his case. *See Letter in Support of Appeal*, dated January 26, 2005.

The record includes, but is not limited to, the applicant's statement, the applicant's parent's statement, a BIA decision and the applicant's criminal record. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on May 1, 2001, the applicant was convicted under § 831.02 of the Florida Statutes for uttering a forged instrument. On February 2, 1999, the applicant was convicted under § 812.014 of the Florida for petit theft. The AAO notes that there are circumstances in which theft may not be a crime involving moral turpitude, but that the applicant also has a conviction for uttering a forged instrument, which is a crime involving moral turpitude.¹ As the applicant has committed at least one crime involving moral

¹ The judgment and sentence for the applicant reflects that he was charged and convicted for petit theft, which is located at § 812.014 of the Florida Statutes. This section states that, "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**, deprive the other person of a right to the property..." In *Matter of Grazley*, the BIA held that theft is a crime involving moral turpitude only when a permanent taking is intended. *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973). The BIA has held that the courts and immigration authorities may look to the record of conviction if the statute under which an alien is convicted includes some offenses which involve moral turpitude and others which do not (i.e. a divisible statute), in order to determine the offense for which the alien was convicted. *See Matter of Short*, 20 I&N Dec. 136 (BIA 1989). The court in *Matter of Short* included the indictment, plea, verdict, and sentence in its definition of the record of conviction. *Matter of Short*, at 137-38. The record of conviction does not include the arrest report. *See In re Teixeira*, 21 I&N Dec. 316, 319-20 (BIA 1996). However, the applicant has not submitted the record of conviction in order for the AAO to determine under which part of the statute he was convicted. The AAO notes that it is the applicant's burden of proof to establish that he is not inadmissible under the Act.

turpitude with a maximum penalty in excess of one year, he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.²

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

(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(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) . . . 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 [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 notes that 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. The AAO notes that the BIA case submitted by the applicant (*Matter of Michel*, 21 I&N Dec. 1101 (BIA 1998)) is not relevant to his case.

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.

² § 831.02 of the Florida Statutes is a 3rd degree felony, which can carry a maximum sentence of five years per § 775.082(3)(d).

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's father, the only qualifying relative in this matter, must be established in the event that he relocates to Mexico and in the event that he remains in the United States, as he is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The applicant's parents state that the applicant is helping provide the basic necessities for their family. *Statement of Applicant's Parents*, undated. There is no other evidence of hardship to the applicant's father in the record. As such, the AAO finds that the applicant has not established extreme hardship in the event that his father relocates to Mexico or in the event that he remains in the United States.

U.S. court decisions have additionally 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. Moreover, the U.S. Supreme Court additionally held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

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. 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.