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U.S. Citizenship  
and Immigration  
Services

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NOV 26 2008

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

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Inadmissibility Pursuant to Section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF PETITIONER:  
[Redacted]

**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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

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 34-year-old native and citizen of Cuba. The record reflects that she was convicted of Grand Retail Theft on July 5, 2001. On the basis of this conviction, the applicant 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 presently seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), claiming that her inadmissibility would cause extreme hardship to her U.S. citizen spouse. She wishes to remain in the United States and adjust her status to that of lawful permanent resident under the Cuban Adjustment Act.

The acting district director found the applicant to be inadmissible based on her theft conviction, and ineligible for a waiver given her failure to establish that her U.S. citizen spouse would experience extreme hardship if the waiver was denied. Specifically, the director noted that the applicant had failed to timely submit the requested evidence of extreme hardship.

On appeal, the applicant, through counsel, claims that she timely submitted the requested evidence. *See* Statement of Applicant on Form I-290B, Notice of Appeal to the AAO. The evidence submitted by the applicant consists of an affidavit executed by her U.S. citizen spouse.

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:

The [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (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 record contains the applicant's record of conviction, indicating that she was convicted in 2001 of Grand Retail Theft in violation of section 812.014(1)(2)(c) of the Florida Statutes. The applicant was sentenced to one year of probation as a result of her conviction. The AAO finds that the applicant's conviction renders her inadmissible as an alien convicted of a crime involving moral turpitude. The AAO thus affirms the director's

finding that the applicant is inadmissible as charged under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A).

Having found that the applicant is inadmissible, the AAO must now determine whether the applicant is eligible for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h). Section 212(h) of the Act provides for a waiver of inadmissibility on the basis of extreme hardship to an applicant's U.S. citizen or lawful permanent resident spouse, parent, son, or daughter. Hardship to the applicant herself is not a relevant consideration under the statute.<sup>1</sup>

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 Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. 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. The BIA has held:

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).

The applicant's spouse, [REDACTED], is a 54-year-old U.S. citizen. The applicant and her spouse have been married since 2004. See Affidavit of [REDACTED] at ¶ 2. They met in Cuba about 10 years ago. *Id.* The applicant's spouse states that the couple has "developed a deep emotional bond" and that he "depend[s] on her assistance with everything ... on a daily basis." *Id.* at ¶ 3. He claims he would have to financially support the applicant should she be removed from the United States. *Id.* at ¶ 5. He maintains that separation from the applicant would cause him "great emotional and financial turmoil." *Id.* at ¶ 4.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant is denied the waiver. Indeed, other than the applicant's spouse's affidavit, the applicant did not submit any financial, medical, employment, or other records to support her claim of hardship. With respect to the claims made by

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<sup>1</sup> The record suggests that the applicant has two children, born in Cuba in 1990 and 1996, respectively. There is no indication that either is a U.S. citizen or lawful permanent resident, or that the applicant's spouse is their father. The record does not contain their birth certificates.

the applicant's spouse in his affidavit, the AAO notes that they are not only uncorroborated, but also lacking in any detail. The AAO cannot find that the applicant's spouse would face anything other than the unfortunate, but expected, disruptions, inconveniences, and difficulties that arise whenever a family member is removed from the United States.

Although the AAO recognizes that separation from the applicant may cause hardship, such hardship is common to all individuals in the applicant's circumstances and does not rise to the level of "extreme." While the AAO carefully considers the emotional impact of separation resulting from the applicant's inadmissibility, a waiver is nevertheless not to be granted in every case where possible separation from a spouse is at issue. *See Shooshtary v. INS*, 39 F.3d 1049 (9th Cir. 1994) (stating that "the extreme hardship requirement . . . was not enacted to insure that the family members of excludable aliens fulfill their dreams or continue in the lives which they currently enjoy. The uprooting of family, the separation from friends, and other normal processes of readjustment to one's home country after having spent a number of years in the United States are not considered extreme, but represent the type of inconvenience and hardship experienced by the families of most aliens in the respondent's circumstances").

The AAO notes that the applicant's spouse does not indicate whether he would relocate should the applicant be removed from the United States. The AAO notes further that, as a U.S. citizen, the applicant is not required to relocate under the statute. The AAO does not dispute that the applicant's spouse may face hardships should he decide to relocate. The AAO cannot, however, find that the applicant's hardship would rise to the level of "extreme" in the absence of any evidence.

Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. The AAO finds that the applicant failed to establish eligibility for a waiver under section 212(h) of the Act, 8 U.S.C. § 1182(h). Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.