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U.S. Department of Homeland Security
20 Massachusetts Ave. N.W., Rm. A3000
Washington, DC 20529



U.S. Citizenship and Immigration Services

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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: SEP 11 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 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.

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 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 (conspiracy to commit theft and/or forgery). The applicant has applied for adjustment of status pursuant to section 1 of the Cuban Adjustment Act. She is the spouse of a Lawful Permanent Resident and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The service center director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Service Center Director Decision* dated April 25, 2006.

On appeal, the applicant states that her husband would suffer extreme hardship if she is removed from the United States because she is pregnant with their first child and he needs to be present to watch the child grow up. *See statement of reasons for appeal, Attachment to Form I-290B, Notice of Appeal to the AAO.* The applicant further states that if she is removed from the United States, she will be sentenced to prison in Cuba and their child will be placed in an orphanage. *See Statement of reasons for appeal.* The applicant's husband states that he would suffer financial hardship if he remained in the United States without the applicant due to the loss of her income, and would not be able to maintain their home or pay for medication he needs to treat his asthma. *See affidavit of [REDACTED]* dated July 1, 2005. He additionally states that if he relocated to Cuba with the applicant, he would suffer financial hardship because he would not be able to work and support the family, and would be unable to continue treatments for his asthma due to frequent interruptions in electrical service. *Id.* He further states that the applicant merits a waiver because she has not had any problems with the police since 1996 and is fully rehabilitated. *Id.*

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

[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) states in pertinent part:

The Attorney General may, in his discretion, waive the application of subparagraphs (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 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 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.

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, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA 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, in *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court 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. 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.

In the present case, the record reflects that the applicant is a forty-one year-old native and citizen of Cuba who has resided in the United States since September 13, 1995, when she was paroled into the United States. The applicant's husband is a thirty-six year-old native and citizen of Cuba who has been a Lawful Permanent Resident since April 2002. The applicant and her husband reside in Hialeah, Florida. The applicant's husband indicated in the Notice of Appeal dated May 9, 2006 that the applicant was pregnant, but the record contains no documentation related to the birth of their child.

The applicant was arrested on November 11, 1997 in Hudson County, New Jersey and charged with attempted theft, conspiracy, uttering a forged instrument, and forgery. She pleaded guilty to the conspiracy charge and was sentenced to imprisonment with credit for 213 days served and two years probation. See *Judgment of Conviction, New Jersey Superior Court, Hudson County*, dated June 29, 1998.

The applicant asserts that her husband would suffer extreme hardship if she is removed from the United States because he would be separated from their child and be unable to watch the child grow up. Further, the applicant states that she would be "sentenced to an undeterminable amount of years in a Cuban prison" and their child would be placed in an orphanage. See *statement of reasons for appeal, Attachment to Form I-290B*. No evidence was submitted to establish that the applicant has given birth to a child in the United States and no evidence was submitted documenting conditions in Cuba or otherwise supporting the assertion that the applicant would be imprisoned there. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

The applicant's husband asserts that he would suffer extreme hardship in Cuba due to his medical condition because interruptions in electrical service would prevent him from receiving aerosol treatments for asthma. See *affidavit of* [REDACTED] dated July 1, 2005. The applicant's husband further states that he would be persecuted in Cuba because he left the country and would be considered a traitor. A letter from his doctor states that the applicant's husband has "moderate to severe persistent asthma" and needs frequent follow-up treatment. See *letter from* [REDACTED] dated July 23, 2005. Significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate, are relevant factors in establishing extreme hardship. The evidence on the record is insufficient to establish, however, that due to his medical condition, the applicant's husband would suffer extreme hardship if he relocated to Cuba. The letter from his doctor states that he has chronic asthma and needs frequent follow-up treatments, but does not describe the nature of the treatments. Without more detailed information, the AAO is not in a position to reach conclusions concerning the severity of a medical condition or the treatment needed. Further, no information was submitted to support the assertions that necessary treatment would not be available in Cuba or that the applicant's husband would be persecuted in Cuba.

The applicant's husband states that the applicant earns \$30,000 per year and helps pay his medical expenses as well as the mortgage payment on their home. No evidence was submitted to document the applicant's income, her husband's income, or the family's expenses, including their mortgage payment and medical expenses related to the applicant's husband's medical condition. As noted above, going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. There is insufficient evidence on the record to establish that the applicant's removal would result in extreme economic hardship to her husband if he remained in the United States. Further, even if the loss of the applicant's income would have a negative impact on her husband's financial situation, the U.S. Supreme Court 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.

It appears from the record that any physical, emotional, or financial hardship to the applicant's husband would be the type of hardship that family members would normally suffer as a result of removal or exclusion. U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996) (defining "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation); *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991); *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).

A review of the documentation in the record reflects that the applicant has failed to show that the hardships faced by the qualifying relative, when considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) 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.