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

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAC, 20 Mass, 3/F
Washington, D.C. 20536

FILE: [REDACTED] Office: MIAMI, FL

Date:

AUG 25 2003

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:

[REDACTED]
PUBLIC COPY

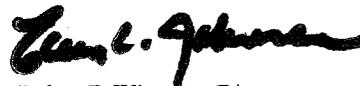
INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.



Robert P. Wiemann, Director
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 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 (aggravated battery and shooting or throwing deadly missile). The applicant has a 5-year-old United States citizen daughter through whom he seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director concluded that the applicant had failed to establish extreme hardship would be imposed upon his U.S. citizen daughter. The application was denied accordingly.

On appeal, counsel asserts that the Immigration and Naturalization Service ("Service", now the Bureau of Citizenship and Immigration Services, "Bureau") erred in finding that the applicant's daughter (Sasha) would not suffer extreme emotional hardship if she were separated from the applicant. In support of his assertion, counsel submitted a copy of a psychological report prepared for Sasha.

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

(A)(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 the Secretary of 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 record reflects that the applicant is married to a citizen of Ecuador, and that he has a U.S. citizen daughter and a Ecuadorian citizen stepchild. Counsel asserts that the applicant's wife and step-child have applied for adjustment of status under section 1 of the Cuban Adjustment Act of November 1966 (CAA), and that due to their eligibility for adjustment of status the Bureau should consider them to be qualifying relatives for section 212(h) waiver purposes.

The AAO finds that the applicant's wife and stepchild are neither U.S. citizens nor legal permanent residents, and that they are not qualifying relatives for section 212(h) waiver purposes. As neither the applicant's spouse nor his step-daughter appears to be a native or citizen of Cuba, neither is independently eligible for adjustment of status under section 1 of the CAA. Their eligibility is dependent upon the approval of the applicant's application under the CAA. Approval of that application is dependent upon granting the waiver that is the subject of the present appeal.

The record contains a psychological report indicating that the applicant's 5-year-old U.S. citizen daughter, Sasha, would suffer emotional hardship if she were separated from her father.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien had established extreme hardship. The 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.

None of these factors were addressed by counsel on appeal. Moreover, based on the evidence in the record, the applicant has

failed to establish that his daughter, Sasha, will actually be separated from him if he is removed from the United States. Sasha's mother and siblings have no legal status or entitlement to immigrant status in the U.S. and the record contains no evidence indicating that the applicant's 5-year-old U.S. citizen daughter would remain with anyone else in the United States.

Moreover, in the event that Sasha did remain in the United States subsequent to the applicant's removal, 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). 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 *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit emphasized that the common results of deportation are insufficient to prove extreme hardship. The evidence in the psychological report does not establish that the applicant's daughter would suffer hardship beyond that normally expected upon the deportation.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen daughter would suffer extreme hardship if his waiver of inadmissibility application is denied. Having found the applicant ineligible for relief, the AAO finds that 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(a)(2)(A) 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.