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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: MIAMI, FL Date: JUN 09 2006

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]

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 District Director, Miami, FL. The matter 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 Cuba who is an applicant for adjustment under the Cuban Adjustment Act. The applicant 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 (grand theft). The record indicates that the applicant has a U.S. citizen child. The applicant seeks a waiver of inadmissibility in order to reside with his child in the United States.

The district director found that based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. child. The application was denied accordingly. *See District Director Decision,* dated December 6, 2004.

On appeal, counsel asserts that the applicant's child will suffer extreme hardship if the applicant is removed from the United States. In addition, counsel states that the applicant has been rehabilitated. *Counsel's Brief,* dated January 12, 2005.

The record includes but is not limited to: a psychological report for the applicant and his child; the birth certificate of the applicant's U.S. child; the applicant's arrest and conviction records; two affidavits from family friend's of the applicant and a statement from the applicant's girlfriend and mother of his child attesting to the applicant's rehabilitation.

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- 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 that:

> (h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-
>
> > (1)(A) [I]t is established to the satisfaction of the Attorney General that-
> >
> > > (i) [T]he 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 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 activities surrounding the applicant's conviction for grand theft occurred on August 2, 1992, less than 15 years from the present date. The applicant is therefore statutorily ineligible for a waiver pursuant to section 212(h)(1)(A) of the Act until August 3, 2007. He is however, currently eligible to apply for a waiver of inadmissibility pursuant to section 212(h)(B) of the Act.

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the U.S. citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien himself experiences due to separation is irrelevant to section 212(h) waiver proceedings unless it causes hardship to the applicant's child. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

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 qualifying relative 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, *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.

The AAO notes that extreme hardship to the applicant's child must be established in the event that she resides in Cuba or in the event that she resides in the United States, as she is not required to reside outside of 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.

The first part of the analysis requires the applicant to establish extreme hardship to his child in the event that she resides in Cuba. The AAO notes that the U.S. does not have diplomatic relations with Cuba and travel to Cuba is restricted for U.S. citizens. Taking into consideration that the applicant's U.S. citizen daughter's mother resides in the United States and the current travel restrictions on U.S. citizens to Cuba, the AAO finds that the applicant's child would suffer extreme hardship as a result of relocating to Cuba.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his child remains in the United States. Counsel states in his brief that the applicant's child is experiencing anxiety as a result of the applicant's depression which is caused by the uncertainty of his future. In support of these statements counsel submits a psychological report on the applicant and his daughter [redacted] In her [redacted] states that the applicant is feeling depressed and anxious and the applicant thinks that his depression is affecting his four year old daughter. The applicant stated that his daughter wakes up crying 2-3 times a week and has impulsive temper tantrums. On page four of her evaluation [redacted] that the applicant's daughter is presently being adversely impacted and suffers emotional and financial hardship because of her father's feelings of depression and anxiety which impacts his ability to define his future. However, on page three of her evaluation [redacted] states that the applicant's child is a normal four years and five month old girl with the tendency to be overly sensitive and overprotected. The doctor goes on to state that the daughter's night terrors are related to maturation. Although [redacted] report seems to reflect that the applicant's daughter is suffering hardships, these hardships do not rise to the level of extreme. Thus, the evidence submitted does not establish that the applicant's child would suffer extreme hardship as a result of the applicant's inadmissibility.

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 child would suffer hardship that was unusual or beyond that which would normally be expected upon removal. 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(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.