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

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUL 26 2007

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.

Ellen C. Johnson

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the waiver application. The matter is now on appeal before the Administrative Appeals Office (AAO) in Washington, DC. The appeal will be dismissed.

The applicant ([redacted]) 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 committed a crime involving moral turpitude. The applicant is married to a lawful permanent resident, [redacted] and he has two sons who are lawful permanent residents. He seeks a waiver of inadmissibility under section 212(h) of the Act.

The district director concluded that the applicant failed to establish extreme hardship would be imposed on a qualifying relative, and denied the Application for Waiver of Excludability (Form I-601). *Decision of the District Director*, dated July 17, 2006.

The AAO will first address the finding of inadmissibility.

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-
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> (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

"[M]oral turpitude refers generally to conduct which is inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general." *Padilla v. Gonzales*, 397 F.3d 1016, 1019-21 (7th Cir. 2005), (quoting *In re Ajami*, 22 I. & N. Dec. 949, 950 (BIA 1999)).

The record reflects that in 2001 the applicant pled guilty to the charge of tamper with a witness/threaten, Fla. Stat. §§ 914.22(1) and 777.011[1]; retaliate against witness/property damage, Fla. Stat. §§ 914.23 and 777.011; and battery, Fla. Stat. § 784.03. The applicant was placed on probation/community control for count 1 (tamper with witness/threaten) and count 2 (retaliate against witness/property damage) and his sentence was suspended for count 3 (battery). *Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida, in the County Court in and for Dade County, Florida, Order of Judge Leon M. Firtel, dated May 3, 2001.*

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[1] Fla. Stat. § 777.011, Principal in first degree, reads as follows:

> Whoever commits any criminal offense against the state, whether felony or misdemeanor, or aids, abets, counsels, hires, or otherwise procures such offense to be committed, and such offense is committed or is attempted to be committed, is a principal in the first degree and may be charged, convicted, and punished as such, whether he or she is or is not actually or constructively present at the commission of such offense.

In determining whether the conviction under Fla. Stat. §§ 914.22(1) (tamper with a witness/threaten) and 777.011 and Fla. Stat. § 914.23 (retaliate against witness/property damage) qualify as crimes involving moral turpitude, courts apply a "categorical" approach. *See, e.g,. Padilla* at 1019 ("courts apply a "categorical" approach to "determine whether a crime necessarily involves moral turpitude by examining only the elements of the statute under which the alien was convicted and the record of conviction" (citations omitted)).

Here, the Information charged the applicant with the following:

> [redacted] and [redacted] on or about March 5, 2001, . . . did knowingly intimidate, use physical force, threaten or attempt to threaten [victim], with intent to cause or induce [victim] to hinder, delay, or prevent the communication to a law enforcement officer of judge of information relating to the commission of an offense, in violation of s. 914.22(1) & s. 777.011 Florida Statutes . . .
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> [redacted] and [redacted] on or about March 5, 2001, . . . knowingly engaged in conduct, threatened to engage in conduct, or attempted to engage in conduct toward [ ], said conduct being GRABBING [VICTIM'S] THROAT, with the intent to retaliate against [victim] for information relating to the commission of an offense or violation of a condition of probation, parole or release pending a judicial proceeding given by [victim] to a law enforcement officer, in violation of s. 914.23 Florida Statutes . . .
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> [redacted] and [redacted] on or about March 5, 2001, . . . did unlawfully commit battery upon [victim] by actually and intentionally touching or striking said person against said person's will, in violation of s. 784.03 Florida Statutes . . .

The AAO notes that the convicting statute, Fla. Stat. § 914.22(1), includes in the criminal offense an "attempt to threaten"; and similarly, Fla. Stat. § 914.23 includes "attempted to engage in conduct." Attempt offenses can be crimes involving moral turpitude. *See, e.g., Matter of Davis,* 20 I. & N. Dec. 536, 545 (BIA 1992) (stating "[t]here is no distinction for immigration purposes in respect to moral turpitude, between the commission of the substantive crime and the attempt to commit it" (citation omitted)).

Concealing criminal behavior has been found to involve moral turpitude. *See, e.g., Itani v. Ashcroft,* 298 F.3d 1213, 1216 (11th Cir.2002) (finding moral turpitude in crime of misprision of a felony as it involves an affirmative act of concealment or participation in a felony); *Cabral v. INS,* 15 F.3d 193, 197 (1st Cir.1994) (moral turpitude found where actions of alien convicted of being an accessory after the fact to murder entailed intentionally assisting the principal in avoiding detection); *Smalley v. Ashcroft,* 354 F.3d 332, 338-39 (money laundering found to involve moral turpitude where it involved "intentionally concealing the proceeds of illegal drug sales"); and *Padilla v. Gonzales*, 397 F.3d 1016, 1021 (7th Cir. 2005) (finding moral turpitude in intent to conceal criminal activity of giving officers a false name and driver's license for the purpose of preventing arrest for driving with a revoked license).

The AAO finds that a conviction under Fla. Stat. §§ 914.22(1) or 914.23 would involve moral turpitude. Fla. Stat. § 914.22(1), convicts for knowingly intimidating, using physical force, threatening or attempting to threaten a person, with intent to cause or induce the person to hinder, delay, or prevent the communication to a law enforcement officer information relating to the commission of an offense. Fla. Stat. § 914.23 convicts for knowingly engaging in conduct, threatening to engage in conduct, or attempting to engage in conduct with the intent to retaliate against a person for information relating to the commission of an offense or violation of

a condition of probation, parole or release pending a judicial proceeding given by the person to a law enforcement officer. The Florida statutes and the Information lead the AAO to conclude that the applicant was convicted for knowingly engaging in acts which were carried out for the purpose of concealing criminal activities. Applying the holdings in *Itani*, *Cabral*, *Smalley*, and *Padilla*, which indicate that concealing criminal behavior involves moral turpitude, the AAO finds that the applicant was convicted of crimes involving moral turpitude.

The AAO will next address whether the applicant's conviction under Fla. Stat. § 784.03, Florida's simple battery statute, is a crime involving moral turpitude.

Courts have held that assault may or may not involve moral turpitude. The BIA stated in *In re Fualaau*, 21 I&N Dec. 475, 478 (BIA 1996), that in the area of assault, crimes involving moral turpitude ordinarily include an aggravating dimension. Thus, aggravated battery under Fla. Stat. Ann. § 784.045 03 was found to be a crime of moral turpitude in *Sosa-Martinez v. U.S. Attorney General*, 420 F.3d 1338 (11th Cir. 2005). Assault with a deadly weapon was held to be a crime involving moral turpitude in *Matter of Medina*, 15 I & N Dec. 611 (BIA 1976), aff'd sub nom. *Medina-Luna v. INS*, 547 F.2d 1171 (7th Cir.1977). In *Grageda v. INS*, 12 F.3d 919 (9th Cir.1993) the Ninth Circuit found willful infliction upon a spouse of corporal injury resulting in a traumatic condition is a crime involving moral turpitude. Willful infliction upon any child of any cruel or inhuman corporal punishment or injury resulting in a traumatic condition was held to be a crime involving moral turpitude in *Guerrero de Nodahl v. INS*, 407 F.2d 1405 (9th Cir.1969)

Simple assault, however, is not considered to be a crime involving moral turpitude. *Matter of Short*, 20 I&N Dec. 136, 139, citing *United States ex rel. Zaffarano v. Corsi*, 63 F.2d 757 (2d Cir.1933); *Ciambelli ex rel. Maranci v. Johnson*, 12 F.2d 465 (D.Mass.1926); *Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988) ; *Matter of Logan*, 17 I & N Dec. 367 (BIA 1980); *Matter of Baker*, 15 I&N Dec. 50 (BIA 1974).

"[A]n analysis of an alien's intent is critical to a determination regarding moral turpitude," as stated by the BIA in *Matter of Serna*, 20 I & N Dec. 579 (BIA 1992). For example, for a finding of moral turpitude "the element of a reckless state of mind must be coupled with an offense involving the infliction of serious bodily injury." *In re Fualaau*, 21 I&N Dec. 475, 479 (BIA 1996) (*citing Matter of Medina, supra; Grageda v. INS, supra).* In *Matter of B-*, 5 I & N Dec. 538, 541 (BIA 1953) the BIA found that a simple assault committed "knowingly" upon a prison guard was not a crime involving moral turpitude.

Here, where the violation at issue is similar to a simple assault, the AAO finds that the applicant's offense was not a crime of moral turpitude, notwithstanding the fact that he acted with "intent," an element of the Florida statute. The record conveys that the applicant's conviction did not involve the use of a deadly weapon or the inflicting of serious injury. The conviction did not have aggravating factors that would have significantly increased his culpability. Applying the reasoning and holdings in the case decisions discussed above, the AAO finds that the applicant's battery conviction did not involve a crime of moral turpitude.

Having found the applicant's convictions under Fla. Stat. §§ 914.22(1) and 914.23 constitute crimes of moral turpitude, making him inadmissible to the United States, the AAO will now address the finding that a waiver of inadmissibility is not warranted.

Section 212(h) of the Act provides, in pertinent part:

> (h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . .
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> (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 . . .

A section 212(h) waiver of the bar to admission resulting from violation of 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 citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a permissible consideration under the statute and will be considered here only to the extent that it results in hardship to a qualifying relative. The qualifying relative here is the applicant's wife and sons. 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).

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 BIA set forth a list of non-exclusive factors relevant to determining whether an applicant has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. 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.

In *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996), the BIA stated that the factors to consider in determining whether extreme hardship exists "provide a framework for analysis," and that the "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." It further stated that "the trier of fact must consider the entire range of factors concerning hardship in their totality" and then "determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." (citing *Matter of Ige*, 20 I & N Dec. 880, 882 (BIA 1994).

The AAO will now apply the *Cervantes-Gonzalez* factors to the present case to the extent they are relevant in determining extreme hardship to the applicant's wife and children. It is noted that extreme hardship to the applicant's qualifying relative must be established in the event that he or she accompanies the applicant; and in

the alternative, that he or she remains in the United States. A qualifying relative is not required to reside outside of the United States based on the denial of the applicant's waiver request.

The record contains the following: permanent resident cards of [redacted] (born on September 28, 1976) and [redacted] (born on September 23, 1986); the certificate of naturalization of [redacted] the applicant's wife; documents from the Social Security Administration (SSA); wage statements; income tax returns; letters from the applicant's wife; birth certificates; a marriage certificate; letters from the Florida Department of Health, Office of Disability Determinations[2]; and other documentation.

The January 18, 2005 letter from the applicant's wife states the following. Her husband's deportation would cause an extreme hardship to her family as he fully supports their household and she is very sick and unable to work. Her minor son is finishing high school and does not work. Her husband is not a threat to the general public and he will not become a public charge; he has been rehabilitated and has not been involved in any criminal proceedings after his last incident.

The July 31, 2006 letter from the applicant's wife is similar in content to the January 18, 2005 letter.

The letter, dated December 31, 2005, from the SSA indicates that the applicant's wife receives a regular Supplemental Security Income (SSI) payment of $196.50 from the SSA.

The applicant's W-2 Form indicates that he earned $22,061.43 in 2005 working with Nailor Industries.

The applicant married his wife on January 30, 1991. *Republic of Cuba, Civil Status Registry, Marriage Certificate.*

The record does not establish that the applicant's family would endure extreme hardship if the waiver of inadmissibility is not granted and they remain in the United States.

[redacted] asserts that it is her husband who financially supports the family. The record conveys that [redacted] earned $22,061.43 in 2005. It also reflects that the couple has two sons, aged 30 and 20 years old. There is no evidence establishing that their sons are not self-sufficient adults; the record does not indicate that they depend to any significant degree on financial assistance from their father. There is no evidence establishing that they are unable to financially support their mother, [redacted] who is 51 years old and receives SSI payments. It is noted that the applicant did not furnish documentation of his wife's disability; nor did he provide the decision made by the Social Security Administration that entitles her to receive SSI disability benefits. The submitted letters from the Social Security Administration merely describe changes to [redacted]s SSI payments. The record does not contain the household expenses of the [redacted] family so as to establish that the applicant's earnings are required in order to meet household expenses. Thus, the record, as constituted, is not sufficient to show that the [redacted] family would endure extreme hardship if the

[2] The letters from the Florida Department of Health, Office of Disability Determinations are in Spanish and have not been translated into English.

applicant's waiver is denied and they remain in the United States. Simply going on record without supporting documentary evidence is not sufficient for the purpose 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)).

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

Courts in the United States have stated that "the most important single hardship factor may be the separation of the alien from family living in the United States," and also, "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted); *Cerrillo-Perez v. INS,* 809 F.2d 1419, 1424 (9th Cir. 1987) (remanding to BIA) ("We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.") (citations omitted).

However, in *Palmer v. INS,* 4 F.3d 482, 488 (7th Cir. 1993), the court found that the BIA did not abuse its discretion by finding that [redacted]r had failed to establish that his children would suffer extreme hardship if he were deported. The court concluded that [redacted]s children are self-sufficient adults and the record did not indicate that they depended to any significant degree on financial assistance from their father. *Id.* at 488. Although the court acknowledged that separation from [redacted] will cause the children anxiety, it found that this was not enough to justify a finding of extreme hardship. "General allegations of emotional hardship caused by severing family and community ties are a common result of deportation." *Id.* at 488. (*citing Marquez-Medina,* 765 F.2d at 675; *Hernandez-Patino,* 831 F.2d at 754-55; *Sullivan v. INS,* 772 F.2d 609, 610-11 (9th Cir.1985).

Furthermore, in *Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), the Ninth Circuit upheld the BIA's finding that deporting the applicant and separating him from his wife and child was not conclusive of extreme hardship as it "was not of such a nature which is unusual or beyond that which would normally be expected from the respondent's bar to admission." (citing *Patel v. INS,* 638 F.2d 1199, 1206 (9th Cir.1980) (severance of ties does not constitute extreme hardship). The Ninth Circuit in *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.

The AAO is mindful of and sympathetic to the emotional hardship that is undoubtedly endured as a result of separation from a loved one. However, it finds that the situation of the applicant's wife and sons, if they choose to remain in the United States, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship. The record before the AAO is insufficient to show that the emotional hardship that will be endured by the [redacted] family, while separated from the applicant, is unusual or beyond that which is normally to be expected upon deportation. *See Hassan,Perez,Palmer, supra.* Thus, the factors needed to categorize hardship as extreme are unfortunately not present in this case.

The AAO finds that the applicant has not established that his family would suffer extreme hardship if they joined him in Cuba.

The conditions in Cuba, the country where the [redacted] family would live if they join the applicant, are a relevant hardship consideration. While political and economic conditions in an alien's homeland are relevant, they do not justify a grant of relief unless other factors such as advanced age or severe illness combine with economic detriment to make deportation extremely hard on the alien or his qualifying relatives. *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994)(citations omitted). Even a significant reduction in the standard of living is not by itself a ground for relief. *Ramirez-Durazo v. INS,* 794 F.2d 491, 498 (9th Cir. 1986). "General economic conditions in an alien's native country will not establish "extreme hardship" in the absence of evidence that the conditions are unique to the alien." *Kuciemba v. INS,* 92 F.3d 496, 500 (7th Cir. 1996), (citing *Marquez-Medina v. INS,* 765 F.2d 673, 676 (7th Cir.1985)).

Economic hardship claims of not finding employment in Mexico do not reach the level of extreme hardship. *Marquez-Medina v. INS*, 765 F.2d 673, 676-677 (7th Cir. 1985). In *Carnalla-Munoz v. INS*, 627 F.2d 1004 (9th Cir. 1980), the Ninth Circuit upheld the BIA's finding that hardship in finding employment in Mexico and in the loss of group medical insurance did not reach "extreme hardship." In a per curiam decision, *Pelaez v. INS*, 513 F.2d 303 (5th Cir. 1975), the Fifth Circuit found that difficulty in obtaining employment and a lower standard of living in the Philippines is not extreme hardship. "Second class" medical facilities in foreign countries are not per se extreme hardship. *Matter of Correa, supra.*

However, in *Carrete-Michel v. INS*, 749 F.2d 490, 493 (8th Cir. 1984), the court stated that the BIA improperly characterized as mere "economic hardship" [redacted]'s claim, which was supported by evidentiary material, that he would be completely unable to find work in Mexico. The court stated that "[a]lthough economic hardship by itself cannot be the basis for suspending deportation, *Immigration and Naturalization Service v. Wang,* 450 U.S. at 144, 101 S.Ct. at 1031, we agree with the Ninth Circuit that there is a distinction between economic hardship and complete inability to find work. *Santana-Figueroa,* 644 F.2d at 1356-57."

The applicant makes no claim of economic hardship stemming from an inability to find work in Cuba. The record, however, conveys that [redacted] has a disability; but it does not contain any medical records of the disability; thus, the AAO cannot determine its nature. The applicant submitted no evidence to establish that suitable medical care for his wife is not available in Cuba. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici, supra.*

In considering the hardship factors raised here, the AAO examines each of the factors, both individually and cumulatively, to determine whether extreme hardship has been established. It considers whether the cumulative effect of claims of economic and emotional hardship would be extreme, even if, when considered separately, none of them would be. It considers the entire range of factors concerning hardship in their totality and then determines whether the combination of hardships takes the case beyond those hardships ordinarily associated with removal.

In the final analysis, the AAO finds that the requirement of significant hardships over and above the normal economic and social disruptions involved in removal has not been met so as to warrant a finding of extreme hardship. Having carefully considered each of the hardship factors raised, both individually and in the aggregate, it is concluded that these factors do not in this case constitute extreme hardship to a qualifying family member for purposes of relief under 212(h) of the Act, 8 U.S.C. § 1182(h).

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. *See* section 291 of the Act, 8 U.S.C. § 1361. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.