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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: JUN 21 2007

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Sections 212(h) and 212(i) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h) and § 1182(i)

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 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 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 crimes involving moral turpitude, and section 212(a)(6)(C)(i) of the Act, 8 U.S.C. § 1182(a)(6)(C)(i), for seeking to procure a benefit under the Act by fraud or willful misrepresentation.[1] The applicant's mother is a U.S. citizen and the applicant seeks a waiver of inadmissibility pursuant to sections 212(h) and 212(i) of the Act, 8 U.S.C. § 1182(h) and § 1182(i), in order to reside in the United States.

The director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Director*, dated August 26, 2006.

On appeal, counsel asserts that the director failed to properly consider the applicant's mother's medical problems and the extreme hardship that she would face based on the applicant's deportation. *Form I-290B*, received September 22, 2006.

The record includes, but is not limited to, an affidavit from the applicant's mother, the applicant's statement, the applicant's criminal record, the applicant's previous citizenship application and the applicant's adjustment of status application. The entire record was reviewed and considered in arriving at a decision on the appeal.

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-
>
> (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, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if –
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> . . . .
>
> (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

[1] The director found the applicant inadmissible under section 212(a)(6)(C)(i) of the Act in the notice of intent to deny. *Notice of Intent to Deny*, dated July 11, 2006.

> 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.

On January 13, 1997, the applicant was convicted on eight counts of unemployment compensation fraud under Florida Statute § 443.071(1) and on one count of grand theft in the third degree in violation of Florida Statute § 812.014(2)(c).[2] These are convictions for crimes involving moral turpitude that render the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

Section 212(a)(6)(C) of the Act provides, in pertinent part, that:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides that:

> (1) The Attorney General [now the Secretary of Homeland Security (Secretary)] may, in the discretion of the Attorney General [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the Attorney General [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

The record reflects that the applicant applied for naturalization on May 6, 1996 and at his preliminary interview, he falsely claimed that he had never been arrested. Therefore, he misrepresented his arrest history to an immigration officer in order to obtain the benefit of U.S. citizenship under the Act.

A section 212(h) waiver is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident parent, spouse or child of the applicant. A section 212(i) waiver is dependent first upon a showing that the bar imposes an extreme hardship to a U.S. citizen or lawfully resident spouse or parent of the applicant. Once extreme hardship is established, it is but one favorable factor to be considered

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[2] Florida Statute § 812.014 states that: (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently. In *Matter of Grazley*, the BIA held that theft is a crime involving moral turpitude only when a permanent taking is intended. *Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973). In *Matter of Grazley*, the respondent was convicted under a Canadian theft statute which required the intent to deprive the owner, either temporarily or absolutely. *Id.* at 332. The BIA looked to the record of conviction to conclude that the respondent had intended a permanent taking (cash), thus finding moral turpitude. *Id.* at 332-333. In this case, the applicant intended to deprive the State of Florida of money. *Information, Count 9*, dated May 27, 1993. Therefore, he intended a permanent taking which results in a conviction of a crime involving moral turpitude.

in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship. These factors include the presence of lawful permanent resident or United States citizen family ties to 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.

Therefore, an analysis under *Matter of Cervantes-Gonzalez* is appropriate in this case. The AAO notes that extreme hardship to the applicant's mother 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 first part of the analysis requires the applicant to establish extreme hardship to his mother in the event that she resides in Cuba. The AAO notes that the applicant's mother is originally from Cuba and is therefore, familiar with the language and culture. The applicant's mother states that she is suffering from mental illness, and that she had a knee replaced and an operation on her spine due to a fractured disc. *Applicant's Mother's Affidavit*, dated September 21, 2006. The applicant also states that his mother has high cholesterol, anxiety and arthritis. *Applicant's Statement*, undated. However, there is no substantiating evidence of medical hardship and evidence of the unavailability of suitable medical care in Cuba. In addition, no other relevant hardship factors are addressed. Therefore, extreme hardship has not been shown in the event that the applicant's mother resides in Cuba.

The second part of the analysis requires the applicant to establish extreme hardship in the event that his mother resides in the United States. The applicant states that he provides support for his mother and that his stepfather is unable to provide support due to problems with his spine and high blood pressure. *Id.* The applicant's mother states that her son's deportation will cause extreme hardship to her due to her physical and mental problems. *Applicant's Mother's Affidavit.* There is no substantiating evidence of medical hardship and/or any other types of hardship. Based on the record, extreme hardship has not been shown in the event that the applicant's mother resides in the United States without the applicant.

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, *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 AAO notes that 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.

The AAO notes that a review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

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