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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [redacted] Office: MIAMI, FLORIDA Date: JUN 09 2009

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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. 103.5(a)(1)(i).

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the 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 Argentina who was found to be inadmissible to the United States under 212(a)(2)(A)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(A)(i)(II), for having been convicted of a crime relating to a controlled substance. The applicant has applied for adjustment of status pursuant to section 1 of the Cuban Adjustment Act. He 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) in order to remain in the United States with his spouse.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the application accordingly. *See Decision of the District Director* dated April 17, 2007.

On appeal, counsel asserts that U.S. Citizenship and Immigration Services (USCIS) erred in finding the applicant inadmissible under section 212(a)(2)(A)(i)(II) of the Act because he was not convicted on February 9, 2004 of possession of marijuana, but rather the disposition in the case was Nolle Prosequi, meaning that the charges were dropped against the applicant. *See Counsel's Letter in Support of the Appeal* dated May 10, 2007. Further, counsel asserts that since the applicant was admitted to the United States as a visitor for business, he is subject to the grounds of deportability rather than the grounds of inadmissibility under the Act, and possession of marijuana is not a ground of deportability. *See Counsel's Letter in Support of the Appeal.* In support of the waiver application, counsel submitted a declaration from the applicant's wife. The entire record was reviewed and considered in arriving at a decision on the appeal.

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-

. . .

(II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Section 212(h) states in pertinent part:

The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D), and (E) or subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana 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.

Counsel asserts that the applicant was not convicted of possession of marijuana, and that even if convicted, he would not be inadmissible under section 212(a)(2)(A)(i)(II) of the Act because he is not subject to the grounds of inadmissibility. The applicant seeks to adjust his status under section 1 of the Cuban Adjustment Act of 1966, which provides, in pertinent part:

> That, notwithstanding the provisions of section 245(c) of the Immigration and Nationality Act . . ., the status of any alien who is a native and citizen of Cuba and who has been inspected and admitted or paroled . . . may be adjusted . . . to that of an alien lawfully admitted for permanent residence if the alien makes an application for such adjustment, and the alien *is eligible to receive an immigrant visa and is admissible to the United States for Permanent Residence*. . . . The provisions of this Act [this note] shall be applicable to the spouse and child of any alien described in this subsection . . . . (emphasis added).

As an applicant for adjustment of status, the applicant is seeking admission as a lawful permanent resident and must establish that he is admissible to the United States. The AAO further notes that the applicant was arrested twice for possession of marijuana, and although the charges from his February 9, 2004 arrest were dropped, he was also arrested on March 27, 2004 and convicted on May 3, 2004 of possession of cannabis (under 20 grams). *See Letter from the Clerk of the Circuit and County Court of the Eleventh Judicial Circuit of Florida* dated March 20, 2006. The applicant is therefore inadmissible under section 212(a)(2)(A)(i)(II) of the Act and must seek a waiver under section 212(h)(1)(B) of the Act.

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.

The record reflects that the applicant is a twenty-seven year-old native and citizen of Argentina who has resided in the United States since March 27, 2003, when he entered as a visitor for business. The record further reflects that the applicant's wife is a thirty year-old native and citizen of Cuba and a Lawful Permanent Resident. The applicant and his wife reside together in Miami Beach, Florida.

The applicant's wife asserts that she would suffer extreme hardship if the applicant were removed from the United States because she loves him and it would severely affect their marital relationship if he were deported. *See Affidavit of* [redacted] dated November 12, 2006. The applicant's wife states that she would suffer emotional hardship due to separation from the applicant, but there is no evidence provided concerning her mental health or the potential emotional or psychological effects of such a separation. The evidence on the record does not establish that the emotional effects of separation from the applicant would be more serious than the type of hardship a family member would normally suffer when faced with the prospect of her spouse's removal or exclusion. Although the depth of her distress over the prospect of being separated from her spouse is not in question, a waiver of inadmissibility is available only where the resulting hardship would be unusual or beyond that which would normally be expected upon removal or exclusion. The prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists.

The applicant's wife further states that she would suffer extreme hardship if the applicant were removed because he helps her financially. *Id.* The AAO notes that no documentation of the applicant's income or the family's expenses was submitted to support the assertion that the applicant's wife would suffer financial hardship as a result of separation from the applicant. 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 record does not establish that there are any unusual circumstances that would cause financial hardship beyond what would normally be expected as a result of the applicant's removal. Living without the applicant's financial support therefore appears to be a common result of exclusion or deportation, and would not rise to the level of extreme hardship for the applicant's wife. *See INS v. Jong Ha Wang, supra* (holding that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship).

The applicant's wife states in her affidavit that "it would be very difficult and almost impossible for me to go to Argentina to visit [the applicant] and/or stay with him." No further explanation was provided as to why the applicant's wife would be unable to relocate to Argentina or visit the applicant, and no documentation was submitted to support the assertion that relocation to Argentina would result in extreme hardship to the applicant's wife. As noted above, 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.*

Any emotional or financial hardship the applicant's wife would experience if the applicant were removed from the United States appears to be the type of hardship that a family member would normally suffer as a result of deportation 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).

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his Lawful Permanent Resident spouse as required under section 212(h) of the Act.

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.