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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

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[redacted]

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FILE: [redacted] Office: MIAMI, FLORIDA (WEST PALM BEACH) Date: MAY 22 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]

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).

Ellen C. Johnson

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 Cuba who was found to be inadmissible to the United States under 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 (burglary of an occupied dwelling). The applicant has applied for adjustment of status pursuant to section 1 of the Cuban Adjustment Act. He is the father of a U.S. Citizen and seeks a waiver of inadmissibility pursuant to 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 on a qualifying relative. The application was denied accordingly. *See Decision of the District Director* dated March 9, 2006.

On appeal, counsel asserts that the applicant provided clear and concise information concerning hardship to his spouse and child if he is removed from the Untied States, and states that U.S. Citizenship and Immigration Services (USCIS) "failed to present evidence showing what constitutes extreme hardship" and failed to establish how the applicant's family would not suffer extreme hardship if he is removed. *Brief in Support of Appeal* at 2, 3. Counsel further contends that the crime the applicant was convicted of does not involve an intent to defraud or evil intent, and is therefore not a crime involving moral turpitude. *Brief* at 3. In support of the waiver application, counsel submitted income tax returns and proof of employment for the applicant, an approval notice for the applicant as the beneficiary of an Asylee Relative Petition, a birth certificate for the applicant's daughter, a family photograph, evidence of expenses including mortgage and childcare payments and an automobile loan, and letters from friends and the applicant's employer in support of the waiver 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:

> (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.
>
> (ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-
>
> > . . . .
> >
> > (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential

> elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

Section 212(h) states in pertinent part:

> (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]his 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 applicant was convicted of burglary of an occupied dwelling in violation of Florida Statute § 810.02(3)(a) on June 19, 2002. Counsel asserts that this crime does not involve moral turpitude because the offense does not involve the intent to defraud or other evil intent. In a recent decision, the Board of Immigration Appeals (BIA) held that a conviction under section 810.02(3)(a) of the Florida Statutes, which is violated when the offender enters or remains in an occupied dwelling, without permission to do so, and with intent to commit any crime therein, is a crime involving moral turpitude. *Matter of Louissaint*, 24 I&N Dec. 754 (BIA 2009). The BIA found that "moral turpitude is inherent in the act of burglary of an occupied dwelling itself, and that the respondent's unlawful entry into the dwelling of another with the intent to commit any crime therein is a crime involving moral turpitude." *Id.* at 759.

The applicant was convicted for conduct that took place less than fifteen years ago and therefore does not qualify for a waiver under section 212(h)(1)(A) of the Act, but he may seek a waiver under section 212(h)(1)(B) of the Act. The AAO notes that the applicant was admitted to the United States as an Asylee under section 208(c) of the Act and his Application to Adjust Status (Form I-485) indicates that he was applying for permanent resident status both under the Cuban Adjustment Act and as an individual granted derivative asylum status. The application was, however, filed with the Texas Service Center and adjudicated as an application under Section 1 of the Cuban Adjustment

Act. If the applicant were to apply for adjustment of status as an asylee under section 209(b) of the Act, he would be eligible to file an Application By Refugee For Waiver of Grounds of Excludability (Form I-602) and seek a waiver of inadmissibility under section 209(c) of the Act for humanitarian purposes, to assure family unity, or by establishing that a waiver is otherwise in the public interest.

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.

In the present case, the record reflects that the applicant is a twenty-six year-old native and citizen of Cuba who has resided in the United States since October 10, 2000, when he was admitted as an asylee under section 208(c) of the Act. The applicant's daughter was born on January 29, 2003 in Palm Beach County, Florida and is therefore a citizen of the United States. The applicant's wife is a thirty-one year-old native and citizen of Argentina. Her status is listed on the applicant's waiver application as an "I-485 Applicant," and there is no evidence on the record that she has been granted Lawful Permanent Resident Status. In the present case, the applicant's daughter is the only qualifying relative for the waiver under section 212(h) of the Act, and hardship to the applicant's wife will not be separately considered, except as it may affect their daughter.

Counsel contends that the applicant submitted sufficient documentation of hardship to his family members and further asserts that USCIS failed to establish how his family members would not suffer extreme hardship if the applicant is removed from the Untied States. The only evidence on the record concerning the applicant's daughter is a copy of her birth certificate and one photograph of her with the applicant. No specific evidence was submitted concerning hardship to the applicant's daughter if he is removed from the United States. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The evidence on the record does not establish that any hardship the applicant's daughter might experience is more serious than the type of hardship a family member would normally suffer as a result of a parent's deportation 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. Counsel submitted income tax returns indicating that the applicant is employed, but did not submit any detailed information concerning the effects of the loss of his income on his family's financial situation. Further, even if the loss of the applicant's income would have a negative impact on his family's financial situation, 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.

It appears from the record that any emotional or financial hardship to the applicant's daughter would be the type of hardship that family members would normally suffer as a result of removal 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). The applicant made no claim that his daughter would experience hardship if she were to relocate with him to Cuba. Therefore, the AAO cannot make a determination of whether the applicant's daughter would suffer extreme hardship if she moved to Cuba.

A review of the documentation in the record reflects that the applicant has failed to show that the hardships faced by the qualifying relative, when considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. 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.