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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: MIAMI, FL

Date: APR 23 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:

[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, Florida. 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 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), as an alien convicted of crimes involving moral turpitude. The record indicates that the applicant is married to a United States citizen. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his United States citizen spouse.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's spouse and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director Decision*, dated August 24, 2005.

On appeal, the applicant, through counsel, contends the "Department of Homeland Security violated the leading case involving 212(h) waiver [sic] when it denied the relief sought." *Form I-290B*, filed September 16, 2005.

The record includes, but is not limited to, counsel's brief, a letter by the applicant's wife and stepchildren, and court dispositions for the applicant's arrests and convictions. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(A) *Conviction of certain crimes.*—

- (i) In general.—Except as provided in clause (ii), any 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...

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

- (h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I)...of subsection (a)(2) if—
 - (1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that—

(i)...the 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 established to the satisfaction of the [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...

(2) the [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In the present application, the record indicates that on September 20, 1995, the applicant was paroled into the United States at the United States Naval Base in Guantanamo, Cuba. On June 15, 1998, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On October 9, 1998, the applicant was arrested in Sunny Isles, Florida, for uttering a worthless document and grand theft. On October 22, 1998, the applicant was arrested in Miami, Florida, for uttering a worthless document and grand theft. On November 20, 1998, a Circuit Court judge convicted the applicant of two counts of Cashing or Depositing Item with Intent to Defraud and two counts of Grand Theft, and sentenced the applicant to two years of probation. On March 24, 2004, the District Director denied the applicant's Form I-485 because he was not eligible for a waiver of inadmissibility because he did not have the "requisite family relationship." The District Director certified the case to the AAO. On April 17, 2004, the applicant married [REDACTED] a United States citizen. On April 21, 2004, the applicant filed a Form I-601. On July 23, 2004, the AAO withdrew the District Director's decision and remanded the case, because the applicant proved he had the requisite family relationship to qualify for a waiver under section 212(h) of the Act. On August 24, 2005, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien himself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse

and stepchildren. 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* [REDACTED] 22 I&N Dec. 560, 565-66 (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 to a qualifying relative. The factors include 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.

Counsel asserts that if the applicant is removed from the United States, it would cause extreme hardship to the applicant's United States citizen spouse and two stepchildren. *Appeal Brief*, page 1, filed September 16, 2005. The applicant's wife states the applicant is the "backbone to our family and because of dedication and effort both [her] and [her] family are here today." *Letter by* [REDACTED], dated April 22, 2004. Counsel states the applicant "helps raise his step- son [sic]." *Appeal Brief, supra* at 3. Counsel claims the applicant "provides support to the family, both emotional and economical. While the Applicant is at work, his wife handles the caretaking duties of the...children. She assists with, among other things, the meal preparation and the raising of the children." *Id.* The AAO notes that on April 22, 2004, the date the applicant's wife drafted her letter in support of her husband's waiver, the applicant's stepchildren were 17 and 18 years old. There was no documentation submitted to establish that the applicant's stepchildren, who are now adults, could not help their mother financially. Additionally, the applicant's wife receives monthly social security payments. The applicant's wife states that in 1999, she "had an accident that left [her] permanently both physically and emotionally disabled." *Letter by* [REDACTED], *supra*. The AAO notes that the applicant failed to provide any medical reports on his wife's medical condition. The record contains a letter from Dr. [REDACTED] who states the applicant's wife has been under his care since September 10, 2001, "with a diagnosis of Major Depressive Disorder, recurrent, secondary to a chronic back injury...From a strictly psychiatric standpoint, her depression is chronic. She also suffers from significant symptoms of anxiety and occasional panic attacks...Mrs. [REDACTED] depends a great deal on her husband." *Letter from* [REDACTED] M.D., P.A., dated August 11, 2005. The AAO notes that the letter from Dr. [REDACTED] who is a Psychiatrist, is the only evidence the applicant submitted regarding his wife's back condition. Regarding the applicant's criminal activities, his wife states he "has never had anymore incidents after that one and...he has been a law biting [sic] citizen ever since." *Letter by* [REDACTED]

The AAO finds the applicant failed to establish that his spouse would suffer extreme hardship if she accompanied the applicant to Cuba. The applicant's wife is a native of Cuba. The applicant failed to demonstrate whether or not they have any family ties in Cuba. In addition, counsel fails to establish extreme hardship to the applicant's spouse if she remains in the United States. As a United States citizen, the applicant's spouse is not required to reside outside of the United States as a result of denial of the applicant's waiver request. Additionally, beyond generalized assertions regarding country conditions in Cuba, the record fails to demonstrate that the applicant will be unable to contribute to his family's financial wellbeing from a

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

United States 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, 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, *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. In *Hassan, supra*, the Ninth Circuit 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. The AAO recognizes that the applicant's spouse will endure hardship as a result of separation from the applicant. However, her situation is typical to individuals separated as a result of removal and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's children 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(a)(2)(A) 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.