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

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FILE:

Office: JACKSONVILLE (MIAMI), FL

Date: AUG 30 2007

IN RE:

Applicant:

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The application was denied by the Officer in Charge, Jacksonville, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed and the application denied.

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 crimes involving moral turpitude. The applicant seeks a waiver of his ground of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The officer in charge noted that the applicant was no longer married and the officer in charge determined that the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were denied admission into the United States. The applicant's Form I-601, Application for Waiver of Ground of Inadmissibility (Form I-601 Application) was denied accordingly.

On appeal the applicant refers to a letter written on his behalf, by his ex-wife [REDACTED] indicates that the applicant is obligated to pay child support and mortgage payments to her. [REDACTED] states further that their son has A.D.H.D. and requires medication, and that she and their children would suffer emotional and financial hardship if the applicant were denied admission into the United States.

Section 212(a)(2)(A) of the Act provides in pertinent part that:

(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)

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of application for a visa or other documentation and the date of application for admission to the United States, or

(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).

The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992) that:

[I]n determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. . . .

The record reflects that the applicant was found guilty of the following offenses:

- 1) 4/24/92 - Aggravated Battery (2 Counts), in violation of Florida Statutes § 784.045(1)(a)(2). The applicant was sentenced to 11 months and 29 days in jail.
- 2) 4/10/96 – Possession Firearm Concealed Weapon by Convicted Felon, in violation of Florida Statutes § 790.23. The applicant was sentenced to 2 years and 6 months in jail.
- 3) 6/10/98 – Aggravated Assault with Deadly Weapon, in violation of Florida Statutes § 784.021. The record contains no sentencing information.

Florida Statutes § 784.045 provides in pertinent part that:

- (1)(a) A person commits aggravated battery who, in committing battery:
 1. Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or
 2. Uses a deadly weapon.

Florida Statutes § 790.23 provides in pertinent part that:

(1) It is unlawful for any person to own or to have in his or her care, custody, possession, or control any firearm, ammunition, or electric weapon or device, or to carry a concealed weapon, including a tear gas gun or chemical weapon or device, if that person has been:

- (a) Convicted of a felony in the courts of this state

Florida Statutes § 784.021 provides in pertinent part that:

- (1) An “aggravated assault” is an assault:
 - (a) With a deadly weapon without intent to kill; or
 - (b) With an intent to commit a felony.

The applicant does not dispute the finding that he has committed crimes involving moral turpitude. Moreover, the AAO finds that the statutory definitions discussed above establish that the applicant committed more than one “crime involving moral turpitude” for immigration purposes. Because the applicant has committed more than one crime involving moral turpitude, the ground of inadmissibility exceptions referred to in sections 212(a)(2)(A)(ii)(I) and (II) of the Act are not relevant to the present matter.

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

The Attorney General [now, Secretary, Department of Homeland Security] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . .

(1)(B) [I]n 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. (Emphasis added.)

Section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

Although the record contains a marriage certificate reflecting that the applicant married [REDACTED], a U.S. citizen, in March 2002, evidence in the record reflects that [REDACTED] and the applicant obtained a divorce in June 2004. The applicant's ex-wife is not a qualifying family member for section 212(h) of the Act purposes. Likewise, the applicant's ex-wife's children, from a different man, are not qualifying family members for section 212(h) purposes. The applicant indicates on appeal that he has two U.S. citizen children [REDACTED] born April 27, 1999, and [REDACTED], born August 5, 1997.) [REDACTED]'s birth certificate states that the applicant [REDACTED] is the father. However, [REDACTED]'s birth certificate contains only her mother's name, and contains no information or statements regarding who her father is. It has therefore not been established that [REDACTED] is the applicant's daughter. Accordingly, she may not be considered a qualifying family member for section 212(h) of the Act waiver purposes. The evidence in the record clearly establishes, however, that [REDACTED] is the applicant's son, and thus a qualifying family member for section 212(h) of the Act waiver purposes.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. 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. The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

"Extreme hardship" has been defined as hardship that is unusual or beyond that which would normally be expected upon deportation. *See Perez v. INS*, 96 F.3d 390 (9th Cir. 1996.) U.S. court decisions have repeatedly held that the common results of deportation (removal) or exclusion (inadmissibility) are insufficient to prove extreme hardship. *See Perez v. INS, supra. See also, Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991.)

The applicant indicates through his ex-wife on appeal, that his son, [REDACTED], will suffer extreme emotional and financial hardship if the applicant is not allowed to remain in the United States. The applicant indicates that although divorced, he still lives with his ex-wife and children, and that he is responsible for paying child support and mortgage payments to his ex-wife. The applicant indicates that his son suffers from A.D.H.D. and requires medicine, and that his son will miss him if he is separated from the applicant.

Upon review of the totality of the evidence, the AAO finds that the applicant has failed to establish that his son will suffer extreme hardship if the applicant's waiver of inadmissibility is denied. The AAO notes that the hardship claims made on appeal lack material detail. Furthermore, the record lacks corroborative evidence to establish that the applicant's son has been diagnosed with A.D.H.D. or that such a diagnosis would cause him to suffer emotional hardship beyond that commonly associated with removal if the applicant were denied admission into the United States. The record additionally lacks corroborative evidence to establish the child custody terms of the applicant's divorce, or to establish that the applicant continues to live with his son. The record also lacks corroborative evidence to establish the amount, and terms of, applicant's child support obligations to his son. Moreover, the AAO notes that, "[t]he 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). The AAO notes further that, distress from being unable to reside close to family is not the type of hardship that is considered extreme. See *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.) Furthermore, the applicant's son appears to be in the physical custody of his mother, and the applicant does not assert that his son would move to Cuba with him and suffer hardship.

Having found that the applicant failed to establish extreme hardship to his son, the AAO notes no purpose in discussing whether the applicant merits a waiver as a matter of discretion. Section 291 of the Act, 8 U.S.C. § 1361, provides that the burden of proof is on the applicant to establish eligibility for the benefit sought. The applicant has failed to meet his burden in the present matter. The appeal will therefore be dismissed, and the application will be denied.

ORDER: The appeal is dismissed. The application is denied.