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**U.S. Citizenship
and Immigration
Services**

H2

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: DEC 05 2008

IN RE:

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:

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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting 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 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 (aggravated battery). The applicant has applied for adjustment of status pursuant to section 1 of the Cuban Adjustment Act. He is the son of a lawful permanent resident and father of two U.S. citizen sons and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The service center 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 Service Center Director* dated September 12, 2006.

On appeal, counsel asserts that the applicant's two sons, in particular his older son, would suffer extreme hardship if the applicant were removed from the United States. Specifically, counsel states that the applicant's son suffers from Attention Deficit Hyperactive Disorder (ADHD), and that the applicant has to spend time with him at least two to three times during the week because he only listens to his father. Further, counsel states that the mother of the applicant's older son does not work, and the applicant pays all of his medical and personal expenses. Counsel additionally states that the waiver application should be approved in the exercise of discretion.

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-

...

(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) states in pertinent part:

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(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 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.

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 thirty-three year-old native and citizen of Cuba who has resided in the United States since July 10, 2000, when he was paroled into the United States. The applicant's father is a fifty-two year-old native and citizen of Cuba and Lawful Permanent Resident. The applicant resides in Miami, Florida and has two U.S. Citizen sons.

The record indicates that the applicant pleaded guilty to aggravated battery in violation of Fla. Stat. Ann. § 784.045(1). Section 784.045 of the Florida Statutes provides:

(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.

Section 784.03 of the Florida Statutes provides, in pertinent part:

784.03 Battery; felony battery.—

(1) (a) The offense of battery occurs when a person:

1. Actually and intentionally touches or strikes another person against the will of the other; or
2. Intentionally causes bodily harm to another person.

Where a statute is divisible (broad or multi-sectional), *see, e.g., Matter of P-*, 6 I&N Dec. 193 (BIA 1954); *Neely v. U.S.*, 300 F.2d 67 (9th Cir. 1962), the court looks to the "record of conviction" to determine if the crime

involves moral turpitude. *Matter of Ajami*, 22 I&N Dec. 949, 950 (BIA 1999) (look to indictment, plea, verdict, and sentence; *Zaffarano v. Corsi*, 63 F.2d 67 757 (2d Cir. 1933); *U.S. v. Kiang*, 175 F.Supp.2d 942, 950 E.D. Mich. 2001). A narrow, specific set of documents comprises the record: “[the] charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented.” *Shepard v. U.S.*, 125 S.Ct. 1254, 1257 (2005). The Ninth Circuit has further clarified that the charging document, or information, is not reliable where the plea was to an offense other than the one charged. *Martinez-Perez v. Gonzales*, 417 F.3rd 1022, 1028-29 (9th Cir. 2005). It is also important to note that the record of conviction does not include the arrest report. *See In re Teixeira*, 21 I&N Dec. 316, 319-20 (BIA 1996).

The U.S. Court of Appeals for the Eleventh Circuit has determined that aggravated battery under section Fla. Stat. Ann. § 784.045(1) is a crime involving moral turpitude. *See Sosa-Martinez v. U.S. Attorney General*, 420 F.3d 1338 (11th Cir. 2005). *See also Yousefi v. INS*, 260 F.3d 318, 327 (4th Cir.2001) (concluding that assault with a dangerous weapon under District of Columbia law involves moral turpitude); *Pichardo v. INS*, 104 F.3d 756, 760 (5th Cir.1997) (finding that aggravated assault pursuant to Pennsylvania’s statute requiring bodily injury involves moral turpitude); *Gonzales v. Barber*, 207 F.2d 398, 400 (9th Cir.1953), *aff’d*, 347 U.S. 637, 74 S.Ct. 822, 98 L.Ed. 1009 (1954) (concluding that assault with a deadly weapon is a crime that involves moral turpitude); *see also Matter of Medina*, 15 I. & N. Dec. 611, 613-14 (1976) (concluding that assault with a deadly weapon under Illinois law involves moral turpitude under any of Illinois law’s three mental states — intent, knowledge, or recklessness). The applicant pleaded guilty to aggravated battery, and the information charging the applicant with this crime states that he is charged with violating section 784.045(1) of the Florida Statutes because he “did . . . knowingly or intentionally cause great bodily harm.” *See Circuit Court, Eleventh Judicial Circuit, Miami-Dade County, Florida, Information for Aggravated Battery*, dated February 19, 2004.

Counsel asserts that the applicant’s sons and father would suffer extreme emotional and economic hardship if the applicant were removed to Cuba. In support of these assertions counsel submitted copies of birth certificates for the applicant’s two sons, a copy of the applicant’s father’s permanent resident card, a letter from the mother of the applicant’s older son, and a Child Support Guidelines Worksheet indicating the applicant must pay \$90 per week in child support for his older son. The entire record was reviewed and considered in arriving at a decision on the appeal.

Counsel asserts that the applicant’s older son would suffer extreme hardship due to his medical condition and due to the loss of the applicant’s financial support if the applicant were removed from the United States. *See Memorandum in Support of Waiver Application* at 2. An affidavit from the older son’s mother states that her son is being treated for ADHD and as a result of this condition has behavioral problems. *See affidavit from* [REDACTED] dated July 14, 2006. She further states that the child will only listen to the applicant, who visits him during the week and speaks to him daily. She additionally states that she is not working and the applicant pays child support and medical and personal expenses. She states: “If [REDACTED] was to be deported it would cost a great deal of pain to [REDACTED] Along with that I am not able to keep up with all his expense.”

The financial impact of departure from this country and significant conditions of health are relevant factors in establishing extreme hardship. There is, however, no medical evidence on the record to establish that the applicant’s son has been diagnosed with ADHD, or that assistance from the applicant is needed to help with this condition. Absent specific evidence, such as a letter from the qualifying relative’s physician describing the exact nature of the medical condition and any current treatment being received and assistance from family

members needed, the AAO is not in a position to determine whether a significant health condition exists. 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 mother of the applicant's older son states in her affidavit that it would cause her son great pain if the applicant were removed, but there is no evidence provided concerning 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 his parent's removal or exclusion. The AAO further notes that the applicant does not reside with his son, and it is not clear from the record how much time he spends with his son. 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.

Counsel asserts that the applicant's sons would suffer extreme hardship as a result of loss of his financial support. *Memorandum in Support of Waiver Application at 2*. The AAO notes that, aside from child support guidelines for the applicant's older son, no documentation of the applicant's income or the family's expenses was submitted to support the assertion that the applicant's children would suffer financial hardship if the applicant were removed. Further, there is no indication that the mother of the applicant's older son, who states she is not working, would be unable to work and support their son. 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 Obaighena*, 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). Further, there is no indication 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 children. *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).

Counsel further states that the applicant's younger son and father would suffer extreme hardship if the applicant were removed, and further states that the applicant is paying for treatment for his younger son, who has "RSV." No evidence was submitted to support these assertions. As noted above, without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof.

It appears from the record that any physical, emotional or financial hardship to the applicant's father or children 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 children or father would experience hardship if they were to relocate with him to Cuba. Therefore, the AAO cannot make a determination of whether they would suffer extreme hardship if they 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 relatives, 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.