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U.S. Citizenship
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Services

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FILE:



Office: CALIFORNIA SERVICE CENTER

Date: JUL 15 2008

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:

SELF-REPRESENTED

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 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. The record indicates that the applicant is the daughter of 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 her United States citizen father and United States citizen sisters.

The Director found that the applicant failed to establish that extreme hardship would be imposed on her qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, dated May 1, 2006.

On appeal, the applicant states she wants “to be a citizen of the USA like all of her family members. [She] want[s] to reside here in the USA legal.” *Form I-290B*, filed May 24, 2006.

The record includes, but is not limited to, the applicant’s statement and criminal court dispositions from the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on September 30, 1996, the applicant was convicted of uttering a forged instrument, forgery, unlawful possession of cannabis, and grand theft in the 3rd degree, by a Circuit Court judge in Dade County, Florida, and was sentenced to one (1) year probation.

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...or an attempt or conspiracy to commit such a crime...is inadmissible.

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

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

- (1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [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 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...

In the present application, the record indicates that the applicant was paroled into the United States on September 17, 1980. On September 30, 1996, the applicant was convicted of uttering a forged instrument, forgery, unlawful possession of cannabis, and grand theft in the 3rd degree, by a Circuit Court judge in Dade County, Florida, and was sentenced to one (1) year probation. On June 6, 2003, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485). On May 1, 2006, the Director denied the Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to her 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 herself 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 father. 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 Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) 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.

The applicant states that she has been trying to legalize her status since 1999, "but was robbed by a lawyer...[Her] crimes are due to being at the wrong place and time." *Form I-290B*, filed May 24, 2006. The AAO notes that neither the applicant nor her father provided any statement regarding what, if any, hardship the applicant's father would suffer if he joined the applicant in Cuba. The AAO finds that the applicant failed to establish that her father would suffer extreme hardship if he joined the applicant in Cuba. The applicant's father is a native of Cuba, and it has not been established that he has no family ties in Cuba. In addition, the applicant fails to establish extreme hardship to her father if he remains in the United States. As a United States citizen, the applicant's father is not required to reside outside of the United States as a result of denial

of the applicant's waiver request. The AAO notes that the record fails to demonstrate that the applicant will be unable to contribute to her 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 Board 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 Court of Appeals 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 United States citizen father will endure hardship as a result of separation from the applicant. However, his situation if he remains in the United States, 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 father 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 she 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.