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U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: NOV 21 2008

IN RE:

PETITION: 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:

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 cursive script, 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. The applicant is the spouse of a lawful permanent resident. He now seeks a waiver of inadmissibility so that he may reside in the United States with his spouse.

The Director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Director*, dated July 6, 2006.

On appeal, the applicant submits a letter from his spouse to establish that he has met the burden of demonstrating extreme hardship to a qualifying relative, as necessary for a waiver. *Form I-290B*.

In support of the applicant's case, the record includes, but is not limited to, statements from the applicant's spouse; criminal records, Miami-Dade County, Florida for the applicant; and an employment letter for the applicant. **The entire record was considered in rendering 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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

- (h) 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 . . .

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.

The record shows that the applicant pled guilty and received a withheld adjudication for assault/aggravated/with a deadly weapon, battery, and burglary of an occupied structure on October 5, 2005. *Finding of Guilt and Order of Withholding Adjudication/Special Conditions, Miami-Dade County, Florida*, dated October 5, 2005. For the crimes of aggravated assault and burglary of an occupied structure, the applicant was placed on probation for three years, fined and ordered to perform 75 hours of community service. The applicant's sentence for battery was suspended. *Order of Supervision*, dated October 5, 2005. Assault with a deadly weapon is a crime involving moral turpitude. *Matter of O*, 3 I&N Dec. 193 (BIA 1948). As such, the AAO finds that the applicant has been convicted of a crime involving moral turpitude.

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These factors include the presence of a lawful permanent resident or United States citizen family ties to 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 AAO notes that extreme hardship to the applicant's spouse must be established whether she resides in Cuba or the United States, as she is not required to reside outside the United States based on the denial of the applicant's waiver request. The AAO will consider the relevant factors in adjudication of this case.

The record shows that the applicant's spouse was born in Cuba. *Form I-551, Permanent Resident Card for the applicant's spouse*. The applicant's spouse has been a lawful permanent resident in the United States since February 4, 2002. *Id.* The record does not address how the applicant's spouse would be affected if she traveled with the applicant to Cuba. Furthermore, the record does not address whether the applicant's spouse is permitted to travel to Cuba, the date of the last time she visited Cuba, or any attempts the applicant's spouse has made to obtain travel permission to Cuba. As such, when looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to relocate to Cuba.

If the applicant's spouse resides in the United States, the applicant needs to establish that his spouse will suffer extreme hardship. The record does not address what additional family members the applicant's spouse may have in the United States. The applicant's spouse states that the applicant is the only person who takes

care of her. *Statement from the applicant's spouse*, dated March 25, 2006. She further notes that if she has to see a doctor or go to the hospital, her spouse is her only support. *Id.* She states that she could become mentally distressed without the applicant's financial support. *Statement from the applicant's spouse*, dated August 1, 2006. The AAO notes that the record does not include any documentation from a licensed health professional regarding any health condition affecting the applicant's spouse. The applicant supports his spouse economically and spiritually. *Statement from the applicant's spouse*, dated March 25, 2006. The applicant's spouse states that if the applicant's waiver is not granted, she will have to abandon her home because she will not be able to afford it as a result of the high cost of living. *Statement from the applicant's spouse*, dated August 1, 2006. While the AAO acknowledges the assertions of the applicant's spouse, it notes that the record fails to demonstrate that the applicant would be unable to contribute to his family's financial well-being from a location other than the United States. The record also fails to demonstrate any employment for the applicant's spouse or the current financial situation of the applicant and his spouse. Going on record without supporting documentary evidence will not meet the burden of proof of this proceeding. *See 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 applicant's spouse states that she does not think that she can have a life without the applicant. *Statement from the applicant's spouse*, dated March 25, 2006. While the AAO acknowledges these assertions, U.S. 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), 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. *Hassan v. INS, supra*, 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, the record does not distinguish her situation, if she remains in the United States, from that of other individuals separated as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's spouse would rise to the level of extreme hardship. When looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his spouse if she were to reside in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's qualifying relative 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)(9)(B) 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.