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

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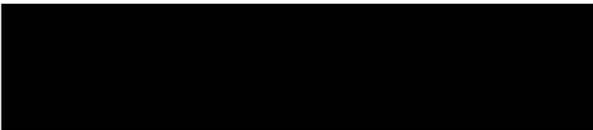


FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 10 2008

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Inadmissibility Pursuant to 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.

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 sustained.

The applicant is a native and citizen of Cuba. The record reflects that he was convicted in 1996 of Possession of Stolen Property, and of Theft and Dealing in Stolen Property in 1994. In 1984, the applicant was convicted of Burglary. The applicant's convictions all resulted in him being sentenced to probation. On the basis of his convictions, the applicant 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 seeks to adjust his status to that of lawful permanent resident pursuant to the Cuban Adjustment Act and maintains that he is eligible for a waiver of inadmissibility under section 209(c) of the Act, 8 U.S.C. § 1159(c). Alternatively, the applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), claiming that his inadmissibility would cause extreme hardship to his U.S. citizen wife and children.

The Director found the applicant ineligible for a waiver given his failure to establish that his U.S. citizen family would experience extreme hardship if the waiver was denied. *See Decision of the Director.*

On appeal, the applicant, through counsel, maintains that he is eligible for a waiver of inadmissibility under section 209(c) of the Act, 8 U.S.C. § 1159(c). *See Statement of the Applicant on Form I-290B, Notice of Appeal to the AAO; see also Applicant's Appeal Brief.* The applicant further maintains that the director erred in not transferring the case to a field office for a personal interview. *Id.* Additionally, the applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), claiming that his inadmissibility would cause extreme hardship to his U.S. citizen wife and children. *Id.*

Section 209(c) of the Act states, in pertinent part:

The Secretary of Homeland Security ... may waive any other provision of section [212(a)] (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (D) of paragraph (3)) with respect to an alien [seeking adjustment under section 209] for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

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 [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 [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 . . .

The record contains the applicant’s records of conviction evidencing that he was convicted of crimes involving moral turpitude in 1996, 1994 and 1984. The AAO finds that the applicant’s convictions render him inadmissible as an alien convicted of a crime involving moral turpitude. The AAO thus affirms the director’s finding that the applicant is inadmissible as charged under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A).

Having found that the applicant is inadmissible, the AAO must now determine whether the applicant is eligible for a waiver under section 209(c) of the Act, or, alternatively, under section 212(h) of the Act, 8 U.S.C. § 1182(h), on the basis of a claim of hardship to his lawful permanent resident mother.

The AAO finds that the applicant has established that denial of the waiver would result in extreme hardship to his family. He is therefore eligible for a waiver under section 212(h) of the Act, and the AAO need not address his eligibility for a waiver under section 209(c) of the Act.<sup>1</sup>

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions,

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<sup>1</sup> Given this finding, the AAO also need not address the applicant’s request for a personal interview.

particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation.

*Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (citations omitted).

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, supports a finding that the applicant's U.S. citizen spouse and children would face extreme hardship if the applicant is denied the waiver. Although standing alone the financial and emotional hardships claimed by the applicant's family may not rise to the level of "extreme," they do when considered in the aggregate. The applicant and his U.S. citizen spouse, a native of Peru, have been married since 2001. They have three young sons, native-born U.S. citizens. The applicant also has a U.S. citizen daughter from a previous relationship. The applicant and his spouse own their home, and have recently opened a restaurant business. The applicant also owns a tow-trucking business. The applicant's family is financially dependent on him for support. The applicant's spouse is not Cuban, and has no family or other ties to Cuba. Given the political, social, and economic conditions in Cuba, the AAO finds that relocation of the family to Cuba would result in extreme hardship. The AAO further finds that separation of the family would also result in extreme hardship. The AAO notes the restrictions on U.S. citizens traveling to Cuba would make it nearly impossible for the family to visit with the applicant should he be removed to Cuba.

The AAO concludes that the hardship to the applicant's family caused by denial of the waiver would be "extreme." In proceedings for application for waiver of grounds of inadmissibility, the burden of proving eligibility rests with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.