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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER

Date: APR 13 2009

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.

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

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 pursuant to 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 committed crimes involving moral turpitude. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to remain in the United States with his U.S. citizen son.

The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) pursuant to the Cuban Adjustment Act on December 1, 2003. The applicant also filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on December 1, 2003.

The director found the applicant inadmissible for having been convicted of “the offenses of Grand Theft (Over \$300) and Battery on a Law Enforcement Officer.” *Decision of Director Denying Form I-485*, dated September 28, 2006. The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of Director Denying Form I-601*, dated September 28, 2006.

On appeal, the applicant asserts that he has established that his U.S. citizen son will suffer extreme hardship if the applicant is deported. *See Form I-290B, part 3*. Counsel observes that the applicant’s son is only three years old, and has never been separated from his father. *Brief in Support of Appeal* at 2. He contends that if the applicant is removed to Cuba, his son will likely never see him again. *Id.* He further asserts that the applicant financially supports his son, and that the child’s mother will be unable to support him on her own. *Id.*

In support of the waiver application, the applicant has submitted an employment verification letter dated October 23, 2006 from the applicant’s employer, [REDACTED]; a letter dated October 24, 2006 from the mother of the applicant’s son, [REDACTED] a copy of the birth certificate of the applicant’s son; and the 2005 U.S. Department of State Country Report on Human Rights Practices for Cuba. The entire record has been reviewed in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act states, in pertinent parts:

(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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(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 was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the 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 (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In 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. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

In the recently decided *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that

statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703. Finally, in all such inquiries, the burden is on the alien to establish “clearly and beyond doubt” that he is “not inadmissible.” *Id.* at 709 (citing *Kirong v. Mukasey*, 529 F.3d 800 (8th Cir. 2008))

The record shows that the applicant, using the name [REDACTED], was arrested in Naples, Florida on February 28, 2001 and charged with (1) fraud – illegal use of credit cards, (2) grand theft in an amount between \$300 and \$5,000, (3) resisting a law enforcement officer with violence, and (4) battery on a law enforcement officer. The applicant, who was born on December 30, 1970, was 30 years old at the time he committed the crimes that resulted in his arrest.

The record shows that the applicant was convicted in the Twentieth Judicial Circuit Court, Collier County, Florida, on July 2, 2001 of grand theft in violation of section 812.014(2)(c)(1) of the Florida Statutes, a third degree felony punishable by a maximum of five years imprisonment, resisting a law enforcement officer with violence in violation of section 843.01 of the Florida Statutes, a third degree felony punishable by a maximum of five years imprisonment, and of battery on a law enforcement officer in violation of section 784.07 of the Florida Statutes, a third degree felony punishable by a maximum of five years imprisonment. The credit card fraud charge was dismissed. The applicant was placed on probation for a period of two years.

At the time of the applicant’s conviction, Florida Statutes § 812.014(2)(c)(1) provided, in pertinent parts:

(1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

(a) Deprive the other person of a right to the property or a benefit from the property.

(b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.

(2) .

(c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

(1) Valued at \$300 or more, but less than \$5,000. . . .

The BIA has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person's property. *See Matter of Grazley*, 14 I&N Dec. 330 (BIA 1973) ("Ordinarily, a conviction for theft is considered to involve moral turpitude only when a permanent taking is intended."). The AAO notes that the statute under which the applicant was convicted is a divisible statute violated by either permanently or temporarily depriving another person of the right or benefit of that person's property.

The applicant has not presented and the AAO is unaware of any prior case in which a conviction has been obtained under Florida Statutes § 812.014 for conduct not involving moral turpitude. Nevertheless, in accordance with the language of *Silva-Trevino*, the AAO will review the record as part of its categorical inquiry to determine if the statute was applied to conduct not involving moral turpitude in the applicant's own criminal case. The AAO notes that the documents comprising the record of conviction are inconclusive as to whether the applicant acted with intent to permanently deprive or to temporarily deprive another person of that person's property. However, the record contains an arrest report dated February 28, 2001 by [REDACTED] that states:

Subject was with two other Hispanic male subjects using numerous credit cards at the K'Mart [sic] store . . . that kept coming up declined.

The subjects were attempting to purchase over \$1000.00 worth of various electronics from the store using fictitious [sic] cards.

Prior to my arrival, the store manager allowed one of the cards to go through in an attempt to stall the subjects even though the card came up declined.

I arrived within three minutes of the dispatched call and was flagged down in the parking lot by a security officer who pointed at a Hispanic male loading the items into the trunk of a vehicle. . . .

In *Matter of Jurado*, 24 I&N Dec. 29, 33-34 (BIA 2006), the Board of Immigration Appeals found that violation of a Pennsylvania retail theft statute involved moral turpitude because the nature of retail theft is such that it is reasonable to assume such an offense would be committed with the intention of retaining merchandise permanently. The reasoning in *Jurado* is applicable to the present case. Based on the evidence in the record, the AAO finds that the applicant's crime was retail theft. He was thus convicted of knowingly taking the property of another with intent to permanently deprive that person of the property, a crime involving moral turpitude, and is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

At the time of the applicant's conviction, Florida Statutes § 843.01 provided, in pertinent part, that "[w]hoever knowingly and willfully resists, obstructs, or opposes any officer . . . by offering or doing violence to the person of such officer . . . is guilty of a felony of the third degree"

Florida Statutes § 784.07 was violated by “knowingly committing . . . battery upon a law enforcement officer.” Section 784.03 of the Florida Statutes provided, in pertinent part:

(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.

Assault on a law enforcement officer has been found to be a crime involving moral turpitude where the perpetrator knows the victim to be a law enforcement officer performing his official duty and the assault results in bodily injury to the officer. *See Matter of Danesh*, 19 I&N Dec. 669 (BIA 1988) (distinguishing cases in which knowledge of the police officer’s status was not an element of the crime and where bodily injury or other aggravating factors were not present to elevate offense beyond “simple” assault); *see also Matter of O-*, 4 I&N Dec. 301 (BIA 1951) (German law involving an assault on a police officer was not a crime involving moral turpitude because knowledge that the person assaulted was a police officer engaged in the performance of his duties was not an element of the crime); *Matter of B-*, 5 I&N Dec. 538 (BIA 1953) (*as modified by Matter of Danesh, supra.*) (assault on prison guard not a crime involving moral turpitude because offense charged appeared to be only “simple” assault and no bodily injury was alleged); *Ciambelli ex rel. Maranci v. Johnson*, 12 F.2d 465 (D. Mass 1926) (assault on an officer was not a crime involving moral turpitude in spite of fact that defendant was armed with a razor because the razor was not used in the assault).

The Florida Supreme Court has ruled that the phrase “knowingly and willfully resists, obstructs, or opposes any officer” in Florida Statutes § 843.01 imposes a requirement that a defendant have knowledge of the officer’s status as a law enforcement officer. *See Polite v. State of Florida*, 973 So.2d 1107, 1112 (Fla. 2007). The Florida Supreme Court has also ruled that knowledge of the officer’s status is an element of the crime of battery upon a law enforcement officer under Florida Statutes § 784.07. *See Street v. State*, 383 So.2d 900, 901 (Fla. 1980).

However, the AAO notes that Florida Statutes § 843.01 is violated by either “offering” to do violence, or by “doing” violence, and there is no requirement that the victim suffer bodily injury. Similarly, Florida Statutes § 784.07 is violated by either intentionally touching or striking an officer against his will or by intentionally causing bodily harm to an officer. Thus, based solely on the statutory language, it appears that Florida Statutes §§ 843.01 and 784.07 encompass (hypothetically) conduct that involves moral turpitude and conduct that does not.

However, in accordance with *Silva-Trevino*, the AAO must determine if an actual case exists in which these criminal statutes were applied to conduct that did not involve moral turpitude. The AAO is aware of a prior case in which Florida Statutes § 843.01 has been applied to conduct not involving moral turpitude. In *Wright v. State*, 681 So.2d 852, 853-54 (Fla. 5th Dist. App. 1996), the court found that the state was not required to prove that the appellant, who had denied under oath that he had hit, kicked or otherwise resisted the officers apprehending him, had actually struck either

of the officers because evidence that he “struggled, kicked, and flailed his arms and legs was sufficient to show that he offered to do violence to the officers within the meaning of section 843.01.” Similarly, in *Hendricks v. State*, 444 So.2d 542, 542-43 (Fla. 1st Dist. App. 1999), the court noted that the appellant had been charged and convicted of battery in the form of touching or striking a law enforcement officer, but not for intentionally causing bodily harm to an officer.

Therefore, the AAO cannot find that the offenses described in Florida Statutes §§ 843.01 and 784.07 are categorically crimes involving moral turpitude. The AAO must therefore review the entire record, including the record of conviction and, if necessary, other relevant evidence, to determine if the applicant’s conviction under these statutes was for morally turpitudinous conduct. The AAO notes that the documents comprising the record of conviction are inconclusive as to whether the applicant caused bodily injury to the officer who arrested him. However, in the arrest report referenced above, [REDACTED] continues:

The subject [REDACTED] then saw me drive up to the front of the store and immediately began to run . . . away from me abandoning the merchandise in the cart.

I then chased the subject across the parking lot on foot ordering him numerous times to stop.

After catching up to the subject, I grabbed his shirt in an attempt to get him to stop at which time I spun him around.

He continued to try and grab my hand to break my grasp and run away at which time I struck him once in the right thigh with my baton.

This action caused the subject to fall to the ground at which point I was able to get one handcuff on.

The subject then tried to pull his hands underneath him and refused to provide me with his free hand so that I could complete securing him.

After ordering the subject numerous times for he [sic] to give his hands, I was able to perform a wrist lock on the subject.

The subject then complied and provided me with his free hand and was immediately secured without further incident. . .

Prior to securing the subject into a patrol vehicle, I asked him if he needed medical assistance which he refused.

The R/O sustained no injuries either as a result of the struggle. . . .

The arrest report indicates that the applicant did not cause any bodily injury to [REDACTED] and suggests that the applicant sought only to evade apprehension. Based on this evidence, and the lack

of any contradictory evidence in the record, the AAO determines that the applicant's convictions for resisting a law enforcement officer with violence in violation of Florida Statutes § 843.01 and for battery on a law enforcement officer in violation of Florida Statutes § 784.07 were not based on conduct that caused bodily injury to a law enforcement officer. Consequently, these convictions are not crimes involving moral turpitude that render the applicant inadmissible under 212(a)(2)(A)(i)(I) of the Act.

Nevertheless, as previously indicated, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) as a consequence of his conviction for grand theft. The applicant has not disputed his inadmissibility on appeal.

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), (B), . . . of subsection (a)(2) . . . if—

. . . .

(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 AAO notes that 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. In this case, the relative that qualifies is the applicant's son. Hardship to the applicant himself is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA 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 BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

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 AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, “the most important single hardship factor may be the separation of the alien from family living in the United States”, and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted). Although the present case did not arise in the Ninth Circuit, separation of family will be given appropriate weight in the assessment of hardship factors.

The AAO notes further, however, that 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, 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 *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court 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.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In an addendum to the waiver application, the applicant states that if he is deported to Cuba, his son will remain in the United States with his son’s mother, [REDACTED]. He indicates that he takes care of his son when [REDACTED] is at work, and asserts that his son’s development would be negatively impacted if he grew up without the love and care of a father. The applicant states that in his absence, [REDACTED] would be compelled to get a full-time job and place their son in daycare. He contends that [REDACTED]’s ability to financially support their son may be compromised by the need for her to send money to support the applicant in Cuba.

In her letter, [REDACTED] indicates that the applicant currently resides with her, her 11-year-old daughter [REDACTED], and their son [REDACTED]. She states that the applicant provides “all [their] necessities.” She asserts that without the applicant’s financial contribution, the children “would not be adequately clothed, fed, and provided with other childhood necessities.” [REDACTED] concedes that she is employed in providing daycare services, but contends that she “[does] not make enough money to pay rent and also provide for [the children] all the things they need.”

In the employment verification letter, _____ Director of Human Resources for [REDACTED], states that the applicant has been employed as a mechanic at the company since February 6, 2006 and is paid a salary of \$300 per week.

In the submitted State Department report, counsel has highlighted that the government of Cuba imposes “restrictions on freedom of movement, including selective denial of exit permits to thousands of citizens.”

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant’s son faces extreme hardship if the applicant is not granted a waiver of inadmissibility. As noted above, hardship to [REDACTED] to whom the applicant is not married, and her 11-year-old daughter is not relevant under section 212(h) of the Act.

Counsel, the applicant and [REDACTED] have asserted that she depends on the applicant’s financial support in order to meet the needs of their son, but there is insufficient evidence in the record to substantiate this claim, or to show that without this financial support, the applicant’s son would experience extreme hardship. No evidence detailing expenses related to the care of the applicant’s son has been submitted. [REDACTED] has indicated that she works, but no evidence of her employment or her pay has been submitted to show the inadequacy of her earnings. Apart from the employment verification letter from [REDACTED] the applicant has submitted no evidence beyond his own assertions showing his earnings and the extent of his financial contribution to the care of his son. The record also does not show that the applicant would be unable continue his financial support of his son from outside the United States, or that [REDACTED] ability to support their son would be diminished as a consequence of remittances sent to the applicant. 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)). Similarly, without documentary evidence to support a claim, the assertions of counsel will not satisfy an applicant’s burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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).

The AAO acknowledges that the applicant’s son will experience emotional hardship if he remains in the United States without his father, but the applicant has failed to demonstrate that this hardship, when combined with other hardship factors, will be extreme. The AAO recognizes the significance of family separation as a hardship factor, but concludes that the hardship described by the applicant and [REDACTED], and as demonstrated by the evidence in the record, is the common result of removal or inadmissibility and does not rise to the level of extreme hardship. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). 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.

The AAO acknowledges that the government of Cuba restricts the foreign travel of its citizens, but also notes that it is a typical result of removal or inadmissibility that an inadmissible alien not be eligible, as a consequence of the removal or inadmissibility, to receive a visa and travel to the United States. The evidence submitted does not show that the applicant’s son will be unable to visit the applicant in Cuba.

Finally, the applicant has indicated that his son will remain in the United States if the applicant voluntarily departs or is removed from the United States and has not asserted, or submitted evidence to demonstrate, that his son would suffer extreme hardship in Cuba if he relocated there. Accordingly, the AAO cannot determine that the applicant's son would suffer extreme hardship if he relocated to Cuba.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the applicant's son, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish eligibility for a waiver of inadmissibility under section 212(h) of the Act. 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(h) of the Act, the burden of establishing that the application merits approval 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.