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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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AUG 12 2009

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date:

IN RE: [REDACTED]

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:

[REDACTED]

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 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 son of a lawful permanent resident mother and father, and states he is the father of two lawful permanent resident daughters. While the record includes birth certificates for the applicant's daughters showing that he is their father and a lawful permanent resident card for his younger daughter, the record fails to document his older child as a lawful permanent resident. 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)). As such, the AAO will not consider this child to be a qualifying relative for purposes of this case. The applicant now seeks a waiver of inadmissibility so that he may reside in the United States with his parents and children.

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 October 30, 2006.

On appeal, counsel contends that United States Citizenship and Immigration Services (USCIS) erred as a matter of law in finding that the applicant failed to establish extreme hardship to his qualifying relative, as necessary for a waiver under 212(h) of the Act. *Form I-290B*.

In support of the waiver, counsel submits a brief. The record also includes, but is not limited to, a statement from the applicant's mother; a statement from the applicant's father; child support payments, statement, and receipt notice; medical records for the applicant's mother; criminal records for the applicant; an employment letter for the applicant; and tax statements 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 on November 28, 2005, the applicant pled guilty to 80 counts of Credit Card Forgery/Intent to Defraud (Florida Statutes § 817.60(6)(a)) and one count of possession of a stolen driver's license (Florida Statutes § 322.212(1)(a)). *Court records, Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida*, dated November 28, 2005. The applicant was placed on probation for five years and ordered to pay fines. *Id.* Illegal use of credit cards is a crime involving moral turpitude. *Matter of Chouinard*, 11 I&N Dec. 839 (BIA 1966). As such, the AAO finds that the applicant has been convicted of crimes 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 qualifying relative must be established whether he or she resides in Cuba or the United States, as he or 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 parents and child were born in Cuba. *Birth certificate for the applicant; Birth certificate for the applicant's lawful permanent resident child.* The applicant's parents have been lawful permanent residents in the United States since May 7, 1999, and his child has been a lawful permanent resident since December 16, 2002. *Permanent Resident Cards.* The record does not address how the applicant's parents or child would be affected if they traveled with the applicant to Cuba. Furthermore, the record does not address whether the applicant's parents or child is permitted to travel to Cuba, the date of the last time they visited Cuba, or any attempts the applicant's parents or child have made to obtain permission to travel to Cuba. As such, when looking at the aforementioned factors, the AAO does not find that the applicant has demonstrated extreme hardship to his mother, father or child upon relocation to Cuba.

If the applicant's mother or father resides in the United States, the applicant needs to establish that his mother or father will suffer extreme hardship. The record does not address what additional family members the applicant's mother or father may have in the United States. Both the applicant's mother and father state that they depend upon their son emotionally and mentally. *Statement from the applicant's mother, dated September 8, 2006; Statement from the applicant's father, dated September 8, 2006.* The record, however, does not contain any documentary evidence, e.g., an evaluation by a licensed mental health practitioner, to establish the nature or severity of the impact that a separation from the applicant would have on their mental health. The applicant's mother states she is a diabetic, and that diabetes is a difficult disease that takes its toll on one's body over time. *Statement from the applicant's mother, dated September 8, 2006.* The AAO notes that the record includes medication and problem lists from the Economic Opportunity Family Health Center that identify the medications prescribed for the applicant's mother, as well as her health problems. *Medication List, Economic Opportunity Family Health Center, dated May 8, 2000.* While the AAO acknowledges that the applicant's mother suffers from health conditions for which she receives prescribed medication, the handwritten notations on the medication and problem lists are not sufficiently legible to establish that the applicant's mother suffers from diabetes. Moreover, the record does not address how being separated from the applicant would affect her medical condition.

If the applicant's lawful permanent resident daughter resides in the United States, the applicant needs to establish that she will suffer extreme hardship. Counsel notes that the applicant's child resides with her mother and the applicant. *Attorney's brief, dated December 25, 2006.* The applicant pays child support for his older daughter who lives with her mother. *Id.; See child support payments, statement and receipt notice.* While the AAO acknowledges these payments, it notes that the record does not establish the applicant's older daughter as a lawful permanent resident and there is nothing in the record to show how these payments affect the applicant's documented lawful permanent resident child. Furthermore, there is nothing in the record that demonstrates the financial expenses of the applicant's older child or whether her mother is employed and contributing to her child's financial well-being. The applicant's mother notes that the applicant's child needs the applicant for emotional, mental and economic support. *Statement from the applicant's mother, dated September 8, 2006.* While the AAO acknowledges this assertion, it notes that the record does not include a statement from a licensed healthcare professional documenting how the applicant's child would be affected emotionally or mentally from being separated from the applicant. 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 AAO acknowledges the difficulties that would be faced by the applicant's mother, father, and child if they were separated from the applicant. However, 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 mother, father, and child will endure hardship as a result of separation from the applicant. However, the record does not distinguish their situations, if they remain in the United States, from that of other individuals separated from family members as a result of removal. Accordingly, it does not establish that the hardship experienced by the applicant's mother, father or child 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 mother, father or child if they were to reside in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to a 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 an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met his burden.

ORDER: The appeal is dismissed.