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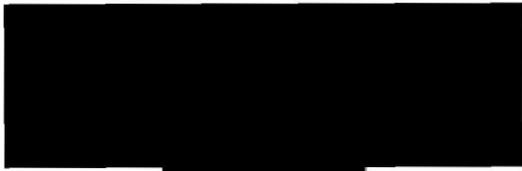
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U.S. Citizenship  
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Services

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FILE:



Office: MIAMI

Date:

**JAN 16 2009**

IN RE:



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).

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom, Acting Chief  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Miami, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, and the application will be denied.

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 been convicted of a crime involving moral turpitude. The applicant seeks a waiver of his ground of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The director determined that the applicant had failed to establish that a qualifying family member would suffer extreme hardship if the applicant were denied admission to the United States. The applicant's Form I-601, Application for Waiver of Grounds of Inadmissibility (waiver application), was denied accordingly.

On appeal, counsel submits a brief dated October 13, 2006. The entire record was reviewed and considered in rendering this decision on the appeal.

Section 212(a)(2)(A)(i) of the Act provides in pertinent part that:

[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.

Regarding the applicant's ground of inadmissibility under section 212(a)(2)(A)(i) of the Act, the record reflects that on June 1, 2000, the applicant was convicted of two counts of *throwing a deadly missile at a vehicle* in violation of section 790.19 of the Florida Statutes and sentenced to one year probation (case number [REDACTED]). The applicant was also convicted of one count of *criminal mischief* in violation of section 806.13(1)(b) of the Florida Statutes and sentenced to a term of imprisonment for 32 days (case number [REDACTED]). The sentence of probation and imprisonment are restraints on the applicant's liberty and, therefore, constitute convictions pursuant to section 101(a)(48)(A) of the Act, 8 U.S.C. § 1101(a)(48)(A).

Section 790.19 of the Florida Statutes provides:

Whoever, wantonly or maliciously, shoots at, within, or into, or throws any missile or hurls or projects a stone or other hard substance which would produce death or great bodily harm, at, within, or in any public or private building, occupied or unoccupied, or public or private bus or any train, locomotive, railway car, caboose, cable railway car, street railway car, monorail car, or vehicle of any kind which is being used or occupied by any person, or any boat, vessel, ship, or barge lying in or plying the waters of this state, or aircraft flying through the airspace of this state shall be guilty

of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Crimes involving moral turpitude are generally defined as an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *See Jordan v. De George*, 341 U.S. 223, 71 S.Ct. 703 (1951); *Matter of Serna* 20 I&N Dec. 579, 581 (BIA 1992). It is the “inherent nature of the crime as defined by statute and interpreted by the courts and as limited and described by the record of conviction” and not the facts and circumstances of the particular person’s case that determines whether the offense involves moral turpitude. *See, e.g., Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989); *Omagah v. Ashcroft*, 288 F.3d 254, 260 (5<sup>th</sup> Cir. 2002); *Goldeshtein v. INS*, 8 F.3d 645 (9<sup>th</sup> Cir. 1993). Neither the seriousness of the criminal offense nor the severity of the sentence imposed is determinative of whether a crime involves moral turpitude. *Matter of Serna*, 20 I&N Dec. 579, 581 (BIA 1992).

In *Matter of Muceros* (BIA Index May 11, 2000), the Board of Immigration Appeals (BIA) held that the respondent’s conviction under section 246 of the California Penal Code for the willful and malicious discharge of a firearm at an occupied vehicle constitutes a crime involving moral turpitude. The BIA reasoned that, “the willingness to risk the potential serious harm in this situation is enough to bring it within the realm of turpitudinous behavior.” *Id.* at 4. In the present case, the applicant was similarly convicted of wantonly or maliciously throwing a missile at an occupied vehicle. Accordingly, the applicant is inadmissible under section 212(a)(2)(A)(i) of the Act for a crime involving moral turpitude. As the maximum penalty for this offense is a term of imprisonment not exceeding 15 years, the applicant does not qualify for a “petty offense” exception to this ground of inadmissibility. *See Fla. Stat. Ann. § 775.082* (West 2000). Counsel does not contest this determination.

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

The Attorney General [now, Secretary, Homeland Security, “Secretary”] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . .

(1)(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.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), 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, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The Board held in *Matter of Ige*, 20 I&N Dec. 880, 882, (BIA 1994), that, "relevant [hardship] factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists."

The record reflects that the applicant married [REDACTED] a lawful permanent resident of the United States and a national of Cuba, on November 20, 2004. Ms. [REDACTED] is a qualifying family member for section 212(h) of the Act extreme hardship purposes. Extreme hardship to the applicant's spouse must be established in the event that she accompanies the applicant to Cuba or in the event that 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.

On appeal, counsel asserts that the contrast in terms of the magnitude between the applicant's crime and the U.S. Citizenship and Immigration Services' (USCIS) boilerplate denial of the waiver is astronomically out of proportion. Counsel notes that the punishment would entail: banishment from this country; the applicant's estrangement from his lawful permanent resident spouse; and a forced return to a totalitarian and third world country ruled by a dictator. Counsel contends that these concrete considerations underlie the particularly special treatment U.S. immigration laws have given to Cubans. Counsel asserts that USCIS has issued a boilerplate denial, which should be reviewed in the context of proportion, considering the nationality of the parties involved.

Counsel's assertion that the applicant would face hardship if he is denied admission to the United States is not germane to these proceedings. As stated, section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon showing that the bar to admission imposes an extreme hardship on a qualifying family member. Hardship to the applicant is not relevant for the purpose of establishing eligibility for a waiver under section 212(h) of the Act. Therefore, at issue in the present case is the hardship imposed on the applicant's spouse due to his inadmissibility.

Furthermore, counsel's assertion that the magnitude of the applicant's crime should foremost be considered in a section 212(h) of the Act waiver determination is misguided. Section 212(h) of the Act has the following two step analysis: First, the applicant must show that the bar imposes an extreme hardship on a qualifying family member; once this is established, the Secretary then assesses whether an exercise of discretion is warranted.<sup>1</sup> Therefore, the magnitude of the applicant's crime will be considered as matter of discretion only after the applicant establishes that his spouse would suffer extreme hardship due to his inadmissibility.

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<sup>1</sup> In this exercise of discretion, the adverse factors evidencing an alien's undesirability as a permanent resident must be balanced with the social and humane considerations presented on his behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. *Matter of Mendez-Morales*, 21 I&N Dec. 296, 300 (BIA 1996).

Counsel furnished a brief, dated April 3, 2006, with the applicant's waiver application. Counsel notes in the brief that if the applicant's wife, [REDACTED], returned to Cuba with her husband, she would be forced to return to a country that she managed to leave. Counsel contends that the current political situation means that [REDACTED] would be seen by the Cuban authorities with extreme distrust and she would mostly likely be subjected to harassment, detention, and interrogation based on her residence in the United States. Counsel contends that [REDACTED] would be viewed as a threat to the Cuban regime because of her exposure to and belief in the United States. As evidence, counsel states that he has furnished a U.S. Department of State report on human rights practices in Cuba. However, this report fails to corroborate counsel's assertion that [REDACTED]'s residence in the United States would, alone, subject her to harassment, detention and interrogation by Cuban authorities. Counsel provides no other documentation in the form of country condition reports or otherwise to corroborate his assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner'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).

Counsel further asserts that medical care in Cuba is a concern for [REDACTED] since the health care system in Cuba is not very good. Counsel also contends that the current economic situation in Cuba is dismal. Counsel notes that the availability of good paying jobs in Cuba are virtually non-existent, making it impossible for either [REDACTED] or the applicant to find a steady job to support their family. The AAO finds counsel's assertions to be vague and lacking detail. No documentation has been provided regarding [REDACTED] health, and whether she has any particular medical conditions requiring her to seek treatment in the United States. Furthermore, no documentation or information has been provided in relation to the applicant and [REDACTED]'s financial status and employment during their prior residence in Cuba, and whether they have any immediate and/or extended family members in Cuba that would provide them with financial support. As stated, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. Accordingly, the applicant has not established that his spouse would suffer extreme hardship if she were to relocate to Cuba due to his inadmissibility.

In addition, the applicant has not established that his spouse would suffer extreme hardship if she remained in the United States without him. Counsel asserts that the extreme hardship suffered by [REDACTED] would be the deprivation of the applicant's emotional, psychological, and financial support. Counsel contends that [REDACTED] would be forced to endure the emotional pain of not having her husband around whom she deeply loves and cares about. Counsel notes that this emotional pain would also translate into psychological hardship since [REDACTED] has become dependent on her husband. Counsel asserts that [REDACTED] would have to endure the intense worrying that would follow the applicant's return to Cuba based on the country's political and economic situation.

The AAO recognizes that the applicant's spouse will suffer emotionally as a result of separation from the applicant. Her situation, however, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. While, in

common parlance, the prospect of separation or involuntary relocation nearly always results in considerable hardship to individuals and families, in specifically limiting the availability of a waiver of inadmissibility to cases of “*extreme hardship*,” Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. The point made in this and prior decisions on this matter is that the current state of the law, viewed from a legislative, administrative, or judicial point of view, requires that the hardship, which meets the standard in INA § 212(h), be above and beyond the normal, expected hardship involved in such cases. U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9<sup>th</sup> Cir. 1996); *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). “[O]nly in cases of great actual or prospective injury . . . will the bar be removed.” *Matter of Ngai*, 19 I&N Dec. 245, 246 (BIA 1984). Further, demonstrated financial difficulties alone are generally insufficient to establish extreme hardship. See *INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

Counsel notes that [REDACTED] would be forced to assume the responsibility of providing financial support to her husband since it is tough to make ends meet in Cuba. Counsel states that this problem is made worse by the current restrictions on travel and sending money from the United States to Cuba. However, no documentation has been provided in relation to [REDACTED]'s financial situation, including her income and expenses, assets and liabilities. Moreover, no documentation or information has been provided in relation to the applicant's financial status and employment during his prior residence in Cuba, whether he would have any immediate and/or extended family members in Cuba that would provide him with financial support, and the amount of financial support he would require from [REDACTED] in order to support himself in the Cuban economy. According to the U.S. Department of State, U.S. persons aged 18 or older may send to members of the remitter's immediate family in Cuba or to a Cuban national in a third country “family” cash remittances of up to \$300 per household in any consecutive three-month period, provided that no member of the household is a prohibited official of the Government of Cuba or a prohibited member of the Cuban Communist Party. U.S. Department of State, Cuba, *Country Specific Information*, December 19, 2007.

The record in its entirety, reviewed in light of the *Matter of Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's spouse would face extreme hardship if the applicant is denied admission to the United States. The record does not contain sufficient evidence to show that the hardships faced by the qualifying relative, 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 failed to establish extreme hardship to his lawful permanent resident spouse as required 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 an 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. 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. The application is denied.