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U.S. Citizenship  
and Immigration  
Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **JAN 29 2009**

IN RE: [REDACTED]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the  
Immigration and Nationality Act (INA), 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to adjust his status pursuant to the Cuban Adjustment Act.

The director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. *Decision of the Director*, dated August 26, 2006.

On appeal, counsel contends that the applicant established extreme hardship to a qualifying relative. *Notice of Appeal to the Administrative Appeals Unit (AAU) (Form I-290B)*.<sup>1</sup>

The record contains, *inter alia*: a copy of the applicant's birth certificate indicating his date of birth is April 7, 1982; copies of the applicant's parents' permanent resident cards; a letter from the applicant's employer; copies of the applicant's tax returns; several letters of support; and conviction documents. The entire record was reviewed and considered in rendering this 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 (other than a purely political offense) 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 [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

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<sup>1</sup> On the applicant's Form I-290B, counsel stated that he would submit a brief and/or evidence to the AAO within 30 days from the date of the appeal. On January 6, 2009, the AAO forwarded a fax to counsel informing him that this office had not received a brief or evidence related to this matter. Counsel has not responded to the AAO's fax. Therefore, the AAO will adjudicate the appeal based on the documentation in the record of proceeding.

(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 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 shows that the applicant entered the United States from Cuba in March 2001 when he was nineteen years old. The record further indicates that on August 23, 2002, the applicant pled no contest to burglary and was sentenced to six months probation. On February 2, 2005, the applicant pled guilty to burglary, grand theft, and possession of burglary tools. He was sentenced to two years probation. Therefore, the record shows that the applicant is inadmissible under section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), for having committed a crime involving moral turpitude. See *Briseno-Flores v. Att'y Gen. of U.S.*, 492 F.3d 226, 228 (3<sup>d</sup> Cir. 2007) (guilty plea to petty theft was a crime involving moral turpitude) (citing *Quilodran-Brau v. Holland*, 232 F.2d 183, 184 (3d Cir. 1956) (“It is well settled as a matter of law that the crime of larceny is one involving moral turpitude regardless of the value of that which is stolen”), and *Matter of Scarpulla*, 15 I&N Dec. 139, 140-41 (BIA 1974) (“It is well settled that theft or larceny, whether grand or petty, has always been held to involve moral turpitude”)).

A section 212(h) waiver is dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. See *Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-566 (BIA 1999), provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship under the Act. These 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.

In this case, there is no evidence that the applicant's parents, who are lawful permanent residents and the only qualifying relatives, would suffer extreme hardship as a result of the applicant's waiver being denied. There are no statements, letters, or affidavits in the record from the applicant or either of his parents. Although counsel claims in his brief in support of the waiver application that the applicant is “extremely close” with his parents and that they all love each other very much, *Brief in Support of Application for Adjustment of Status* at 8, dated March 15, 2006, there is no supporting documentary evidence addressing how their situation rises to the level of extreme hardship. Their situation is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship based on the record. The Board of Immigration Appeals and the Courts of Appeals

have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. 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 (9<sup>th</sup> 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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9<sup>th</sup> Cir. 1991) (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). Going on record without any supporting documentary evidence is insufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (BIA 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

To the extent counsel contends in his brief below that the applicant “provide[s] a decent living for his family in the United States,” *Brief in Support of Application for Adjustment of Status* at 9, *supra*, there is no evidence the applicant financially supports his parents. There is no evidence regarding whether the applicant’s parents work and no evidence addressing their financial situation. Again, going on record without any supporting documentary evidence is insufficient to meet the burden of proof. *Matter of Soffici, supra*. In any event, even assuming some economic hardship, as the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship. *See also 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).

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant’s parents 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(h) of the Act, 8 U.S.C. § 1182(h), 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.