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U.S. Citizenship
and Immigration
Services

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FILE:

Office: CALIFORNIA SERVICE CENTER Date:

JAN 29 2009

IN RE:

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:

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 is married to a legal permanent resident and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with her husband, children, and mother in the United States.

The director found that the applicant failed to establish extreme hardship to her U.S. citizen parent and denied the application accordingly. *Decision of the Director*, dated August 26, 2006.

The record contains a copy of the marriage certificate of the applicant and her husband, indicating that they were married on October 16, 2005; an affidavit from the applicant's mother; medical documentation and a letter from the applicant's mother's physician; copies of tax returns; a copy of the applicant's diploma from a dental assistant program; criminal conviction documents; a copy of the applicant's asylum application and subsequent asylum approval; a copy of the applicant's mother's naturalization certificate; and several letters of support. The entire record was reviewed and considered in rendering this decision on the appeal.¹

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:

¹ On the applicant's Notice of Appeal to the Administrative Appeals Office (AAO) (Form I-290B), counsel states that he will be submitting 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.

(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 -

....

(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 without inspection on July 16, 1998. The applicant applied for asylum and her application was granted on March 22, 1999. On December 19, 2001, a grand jury charged the applicant with intent to defraud and keep in her possession counterfeit \$100 bills totaling approximately \$9,000. On June 24, 2002, the applicant was found guilty of possessing counterfeit currency in violation of 18 U.S.C. § 472. She was sentenced to four months imprisonment and three years probation. Therefore, the record shows that she is inadmissible under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. *See Winestock v. INS*, 576 F.2d 234, 235 (9th Cir. 1978) ("Violation of [18 U.S.C.] Section 472 is a crime involving moral turpitude.") (citations omitted); *see also Jordan v. De George*, 341 U.S. 223, 227-28 (1951) (stating that federal and state courts have consistently held that crimes that prove fraud are crimes involving 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*, 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 addition, the Court of Appeals for the Ninth Circuit has held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and, "[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." *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (citations omitted). *See also Cerrillo-Perez v. INS*, 809 F.2d 1419, 1424 (9th Cir.

1987) (“We have stated in a series of cases that the hardship to the alien resulting from his separation from family members may, in itself, constitute extreme hardship.”) (citations omitted); *Mejia-Carrillo v. INS*, 656 F.2d 520, 522 (9th Cir. 1981) (economic impact combined with related personal and emotional hardships may cause the hardship to rise to the level of extreme) (citations omitted). Because the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals, separation of family will be given the appropriate weight under Ninth Circuit law.

In this case, the record reflects that the applicant’s husband and two adult children, who are lawful permanent residents, and her mother, who is a U.S. citizen, all live in the United States. The applicant’s mother recently suffered a heart attack and suffers from hypertension, chronic obstructive pulmonary disease, and depression. *Affidavit of* [REDACTED] dated July 16, 2006. According to the applicant’s mother, [REDACTED] she is 67 years old and has lived in the United States since 1988. *Id.* [REDACTED] claims the applicant “is the only person that [she] can count on to take care of [her],” and that if the applicant did not assist her, she “would simply have no one to provide [her] with any assistance.” *Id.* She states that the applicant drives her to medical appointments, stayed by her side during her hospitalization, obtains her medications, and makes medical appointments for her. *Id.* A letter in the record from [REDACTED] physician states that [REDACTED] has been a patient for the last nine years and has had “multiple medical problems, including a recent cardiac surgery.” *Letter from* [REDACTED] dated July 7, 2006. The physician’s letter lists the other medical problems [REDACTED] has had, including hypertension, chronic obstructive pulmonary disease, and depression. *Id.* The letter also states that the applicant is [REDACTED] caregiver and that she “devotes many hours a day to care for her mother.” *Id.*

It is not evident from the record that the applicant’s husband, mother, or sons would suffer extreme hardship as a result of the applicant’s waiver being denied.

With respect to the applicant’s husband and sons, there is no evidence they would suffer extreme hardship if the applicant’s waiver application were denied. There are no statements, letters, or affidavits from the applicant, her husband, or either of her sons. Although counsel claims in his brief in support of the waiver application that the applicant has a “very close” relationship with her husband and her sons, and that they all love each other very much, 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 (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. *See also Hassan v. INS*, 927 F.2d 465, 468 (9th 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)).

With respect to the applicant's mother, [REDACTED] there is insufficient evidence in the record to show that she would suffer extreme hardship if her daughter's waiver application were denied. Even though [REDACTED] does not specifically address whether returning to Cuba with her daughter to avoid the separation of hardship would result in extreme hardship, the AAO nonetheless finds that she would suffer extreme hardship, particularly considering her advanced age, health conditions, the fact that she has lived in the United States for over twenty years, and the general circumstances in Cuba.

Nonetheless, [REDACTED] has the option of staying in the United States. Although the AAO is sympathetic to her circumstances, there is insufficient record evidence to show that [REDACTED] would suffer extreme hardship if she remains in the United States without her daughter. [REDACTED] contends the applicant schedules and takes her to medical appointments, obtains her medications, and, in general, takes care of her and supports her. *Affidavit of [REDACTED] supra*. However, the applicant's husband and two adult children live in the United States and there is no recognition or discussion regarding whether they can help care for [REDACTED]. In addition, although [REDACTED] had a heart attack "recently," there is no indication regarding when she had her heart attack, nor is there any information regarding whether her heart attack requires follow-up care or the extent of any assistance she needs. Furthermore, there is no information regarding the severity of [REDACTED] other medical conditions, their prognosis, any treatment necessary, or how these conditions impact her daily life. Similarly, there is no information regarding what medications, if any, [REDACTED] takes, and there is insufficient detail regarding how the applicant purportedly cares for her mother "many hours a day." *Letter from [REDACTED]* Without more detailed information, the AAO is not in the position to reach conclusions regarding the severity of a medical condition or the treatment and assistance needed.

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 she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(6)(C) of the Act, 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.