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U.S. Citizenship  
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FILE:

Office: MIAMI

Date: JUL 28 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).

John F. Grissom  
Acting Chief, Administrative Appeals Office

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

The applicant is a native and citizen of Cuba, the husband of a United States legal permanent resident (LPR) wife, and the father of three U.S. citizen children. The applicant filed for adjustment of status pursuant to the Cuban Adjustment Act. The district director found the applicant to be inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act (the Act) for having been convicted of crimes involving moral turpitude. The district director also found that the applicant had fraudulently obtained an immigration benefit, although, rather than relying upon it as a basis for inadmissibility, the district director appeared to rely on it as evidence that the applicant has not been rehabilitated since his criminal convictions.

The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his wife and children. The district director concluded that the applicant had not demonstrated that denial of the waiver application would result in extreme hardship to a qualifying relative as described in section 212(h) of the Act, and denied the application accordingly.

On appeal, counsel argued that the evidence of record is insufficient to show that the applicant fraudulently obtained an immigration benefit. Counsel also asserted that the applicant's wife, and children would suffer extreme hardship if he is not permitted to remain in the United States.

Initially the AAO will discuss the finding that the applicant fraudulently obtained an immigration benefit. The district director noted that former District Adjudications Officer [REDACTED] issued the applicant a pass to enter the District Office, although the applicant's case was not assigned to him through official channels, and issued the applicant a temporary proof of lawful permanent residence on February 26, 2003. The district director further noted that Officer Cintron was subsequently convicted of fraudulently approving cases for lawful permanent residence.

The AAO finds that the facts cited by the district director support an articulable suspicion that the applicant may have engaged in fraud. Those facts are insufficient, however, to form the basis for a finding of fraud. The AAO declines to find that the applicant engaged in fraud, and the decision of the director is withdrawn as to that basis of inadmissibility. The AAO further declines to rely on those facts to find that the applicant has not been rehabilitated, but notes that whether the applicant has been rehabilitated is not directly relevant to any issue material to today's decision.

Although counsel did not appear to contest the district director's determination of inadmissibility based on convictions of crimes involving moral turpitude, the AAO will review that determination.

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

(i) In general. – Except as provided in clause (ii), any 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 . . . . 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).

On April 7, 1995, the applicant was arrested, in Columbia, Florida, for a violation of 18 U.S.C. 472, possession of counterfeit currency. On August 31, 1995, the applicant was convicted, pursuant to his plea, on this charge. On November 28, 1995 the applicant was sentenced to eight months confinement, and placed on supervised release for three years.

On October 12, 1996, the applicant was arrested, in Miami, Florida, for a violation of Florida Statutes section 812.014, grand theft (auto). That case was subsequently closed.

On December 20, 1997, the applicant was arrested, in Miami, Florida, for a violation of Florida Statutes 812.014, retail theft. The disposition of that charge is unknown to the AAO.

On March 19, 1998, the applicant was arrested, in Miami, Florida, for a violation of Florida Statutes 796.07. offering to commit prostitution. On May 5, 1998, the applicant was convicted of that offense.

On May 22, 2001 the applicant was arrested, in Miami, Florida, for a violation of Florida Statutes 817.234(i), insurance fraud. The disposition of that charge is unknown to the AAO.

The statute at 18 U.S.C. § 472, as in effect on April 7, 1995, read,

Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered

obligation or other security of the United States, shall be fined under this title or imprisoned not more than 15 years, or both.

The statute pursuant to which the applicant was convicted makes clear that it requires intent to defraud. Crimes that require the intent to defraud are, without exception, crimes involving moral turpitude, and the United States Court of Appeals for the Seventh Circuit has specifically held that a conviction for a violation of 18 U.S.C. § 472 is a conviction of a crime involving moral turpitude. *Lozano-Giron v. Immigration & Naturalization Service*, 506 F2d 1073 (7<sup>th</sup> Cir. 1974).

The applicant's birth certificate in this matter indicates that the applicant was born on November 4, 1972 and was over 18 years of age when he committed the crime of possessing counterfeit currency with intent to defraud. The maximum penalty for his crime was 15 years imprisonment. He thus does not meet the requirements for an exception as set forth in section 212(a)(2)(A)(ii) of the Act.

The AAO find that because he was convicted of a crime involving moral turpitude when he was over 18 years old and does not qualify for the single petty offense exception, the applicant is inadmissible pursuant to Section 212(a)(2)(A). Because the applicant is inadmissible for his conviction of that crime involving moral turpitude, the AAO will not engage in an analysis of whether the applicant is also inadmissible for his conviction of offering to commit prostitution.

The balance of this decision will pertain to whether waiver of that inadmissibility is available and whether the applicant has demonstrated that waiver of that inadmissibility, if available, should be granted.

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

The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraph (A)(i)(I)

(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 . . . .

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA1999). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals set forth a nonexclusive list of 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 BIA has held:

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).

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).

A waiver of inadmissibility under section 212(h) of the Act is dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying relative, *i.e.*, the U.S. citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant himself is not directly relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative in the application. The applicant's mother, wife, and children are the only qualifying relatives in this case. If extreme hardship to a qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

On appeal, counsel submitted the 2003 Country Report on Human Rights Practices in Cuba from the U.S. Department of State. He also provided the annual report of the Foundation for Human Rights in Cuba. Both of those reports describe various human rights abuses in Cuba.

The record contains an undated letter from the applicant's wife. In it, she stated that she and the applicant have a very special relationship. She further stated that she does not speak English and has no job skills. Elsewhere in that letter she stated that if she joins the applicant in Cuba she will lose her employment and the ability to continue to teach her students. The record contains no other evidence pertinent to the applicant's wife's employment history.

Although the statements by the applicant's wife are relevant and have been taken into consideration, little weight can be accorded them in the absence of supporting evidence. An unsupported statement is insufficient to sustain 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)).

The applicant's wife stated that the applicant supports her and their two children. She further stated that, if the applicant were removed to Cuba, he would be unable to visit them and unable to provide any support to them because of the economic conditions in Cuba. She cited the State Department Country Report in support of that proposition. The AAO notes that the economic situation in Cuba is not the subject of that Country Report, and the report does not directly address it, nor does the report of the Foundation for Human Rights in Cuba.

The applicant wife also stated that she and the applicant would be unable, if the family returned to Cuba, to send their children to English-speaking schools, but provided no evidence in support of that assertion. Again, although the applicant's wife's statement will be considered, it is insufficiently probative, absent supporting evidence, to sustain the burden of proof in this matter. *Matter of Soffici, supra; Matter of Treasure Craft of California, supra.* Further, as the record does not indicate whether the applicant's children are fluent in Spanish, it contains no indication that attending a school taught in Spanish would represent a hardship for them.

The applicant's wife stated that, if the family returns to Cuba, the children would be unable "to participate in the technological revolution that is sweeping the world," and that in Cuba using the Internet is a crime. The State Department report supports the assertion that access to the Internet is controlled by the government in Cuba and is expensive, and that E-mail messages are subject to government censorship.

The applicant's wife stated that "Cuba is a very backward country," and that "Medical conditions are severe in Cuba." She stated that, in order to treat his back condition, her husband requires therapy until surgery is required, and requires drugs that are unavailable in Cuba. She stated that she would also feel the hardship that would be engendered to her husband, presumably by the allegedly inadequate medical care.

The applicant's wife did not identify the drugs that her husband requires or show that they are unavailable in Cuba, or provide any other evidence pertinent to the medical care available in Cuba, nor did she offer support for the abstract assertion that Cuba is backwards. She did not demonstrate, nor even allege, that therapy and surgery for her husband's back problem would be unavailable to him in Cuba. As per *Soffici and Treasure Craft*, absent supporting evidence, the applicant's wife's assertions are insufficient to sustain the burden of proof.

The applicant's wife stated that her husband would be unable to "follow a diet" because of the scarcity of food in Cuba. She did not explain how the applicant's inability to follow a particular diet would cause hardship to her, or to his children.

The applicant's wife stated that the uncertainty pertinent to her husband's status has been emotionally difficult for her because she fears losing him. She stated that she does not believe that she will be able to recover until the case is favorably resolved. She provided no evidence that her emotional state is more severe than would be expected in this situation. Without such supporting evidence, the applicant's wife's assertions pertinent to her present or future emotional state cannot demonstrate that the failure to grant waiver in this case would cause her hardship which, when combined with the other hardship factors in this matter, would rise to the level of extreme hardship.

The applicant's wife stated that the applicant also pays child support for his son, [REDACTED] a child from a previous marriage, and provides devoted care and emotional support to him too. She stated that [REDACTED] would be devastated if he were separated from the applicant, and that, because of the economic situation in Cuba, the applicant would be able to provide no support to him if he were removed.

The applicant's wife stated, but provided no evidence to support, that the applicant's brother died at age 19, and that his mother has not recovered. She stated, "Deportation . . . to Cuba is a type of death," and that if the applicant is removed, for his mother, it would be like reliving her other son's death.

The applicant's wife stated that she and the applicant have financed a car together, and would like to purchase a home, and that if the applicant were removed to Cuba, she would be unable to accomplish that on her own.

In the brief filed on appeal, counsel stated that the evidence demonstrates that to deny waiver in this case would cause extreme hardship to the applicant's qualifying relatives. He also stated that the application for waiver was previously approved, and that, because there is no indication of any impropriety on the part of the applicant, "(t)he legality of a second adjudication is (questionable)." Counsel, however, provided no authority to support the assertion that the review of the previous decision was in any way questionable.

As was noted above, the record shows that the applicant's waiver application was initially approved by [REDACTED], a former adjudications officer who was subsequently convicted of fraudulently approving applications during his tenure. The instant waiver application had not been assigned to [REDACTED] through ordinary channels. Under these circumstances, the district director was manifestly justified in revisiting the decision made in this matter. Although the AAO has declined to rely on those facts to find that the applicant committed fraud, neither will the applicant be permitted to rely on that initial approval to show that he is eligible for waiver.

The AAO will review the facts of this case *de novo*. The applicant is obliged to demonstrate eligibility for waiver, without relying on the approval of his waiver application that was made by an adjudications officer subsequently convicted of fraudulently approving applications.

The applicant's wife stated that the applicant will be unable to contribute to the support of her, her children, or the applicant's child from a previous marriage, in the event that he is removed to Cuba. The applicant wife alleged that she does not speak English and has no job skills and implied that, in the event that the applicant goes to Cuba and his family remains in the United States, she would be unemployable. She also, however, implied that she is currently employed, and provided no history pertinent to previous employment or unemployment. Further, neither she nor the applicant nor counsel provided evidence pertinent to the finances of the family of the applicant's previous child. The record contains no indication that the applicant's previous child relies on the applicant's financial support in order to live without hardship.

Although the loss of the applicant's income would likely cause some hardship, the record contains insufficient evidence to demonstrate that it would cause hardship to any of the applicant's qualifying relatives which, when considered together with the other hardship factors in this case, would rise to the level of extreme hardship.

The applicant's wife stated that the applicant requires drugs that would be unavailable to him in Cuba, and suggested that other necessary treatment would also be unavailable to him, and that this

alleged unavailability of suitable medical care would cause the applicant hardship from which she would also suffer. However, neither the applicant's wife, nor the applicant, nor counsel provided any evidence from which the AAO can find that the medical care available in Cuba would be insufficient to meet the applicant's needs. Under these circumstances, the AAO cannot find that medical care available in Cuba would cause hardship to the applicant, which would in turn cause hardship to his wife, which, when combined with the other hardship factors in this case, would rise to the level of extreme hardship, whether or not the applicant's family accompanied him to Cuba.

The applicant's wife alleged that the applicant's mother would suffer extreme hardship if the applicant is removed and she remains in the United States because of her emotional fragility occasioned by her other son's death. The record contains no other evidence, however, pertinent to that emotional fragility. The evidence in the record is insufficient to show that the applicant's removal would cause his mother emotional hardship which, when considered with the other hardship factors in this case, rises to the level of extreme. Further, the record does not show that the applicant's mother is either a U.S. citizen or a U.S. LPR. As such, hardship to her has not been shown to be relevant to the approvability of the waiver application pursuant to Section 212(h)(1)(B) of the Act.

The applicant's wife stated that she is suffering emotional hardship because of the uncertainty of the applicant's immigration status, and implied that she would also suffer emotional hardship from being separated from him if he were removed to Cuba and she remained in the United States. As was noted above, however, she provided no evidence that her emotional state has suffered more grievously than one would expect in any case in which a spouse is removed from the United States. The evidence does not show that, if the applicant were removed and his wife remained in the United States, she would suffer hardship which, when combined with the other hardship factors in this matter, would rise to the level of extreme hardship.

Similarly, although the applicant's wife alleged that the applicant's children would suffer extreme emotional hardship if he is removed and they remain in the United States, the record contains no other evidence that the hardship they would suffer is any greater than that expected when a parent is removed from the United States.

The record contains no other evidence pertinent to hardship the applicant's qualifying relatives would suffer if he returned to Cuba and they remained in the United States. The record does not demonstrate that, if the applicant were removed to Cuba and his qualifying relatives remained in the United States, they would suffer extreme hardship.

The applicant's wife stated that she and the applicant have various relatives in the United States, many of whom live near them, and that if she and the applicant were to return to Cuba she would be unable to contact them. She stated, "We share a strong support network which would be severed if [the applicant were removed to Cuba and she joined him]." The applicant's wife did not specify what type of support her relatives and in-laws provide, or how foregoing it would constitute a hardship for her.

The applicant's wife asserted that the children, if they returned to Cuba, would be unable to participate in the rapid advance of computers, but provided no other evidence pertinent to financial

privation they might suffer in Cuba. The record contains insufficient evidence to establish that the applicant's qualifying relatives would suffer economic hardship, if they returned with him to Cuba, which, when combined with the other hardship factors in this case, would rise to the level of extreme hardship.

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 wife or children face extreme hardship if the applicant is refused admission. Rather, the record suggests that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a son, spouse, or father is removed from the United States.

The record demonstrates that the applicant has very loving and devoted family members who are extremely concerned about the prospect of the applicant's departure from the United States. Although the depth of concern and anxiety over the applicant's immigration status is neither doubted nor minimized, the fact remains that Congress provided for a waiver of inadmissibility only under limited circumstances.

In nearly every qualifying relationship, whether between husband and wife or parent and child, there is affection and a certain amount of emotional and social interdependence. While, in common parlance, separation or 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 made plain that it did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exist.

Separation from one's spouse or child is, by its very nature, a hardship. The point made in this and prior decisions on this matter, however, is that the law requires that, in order to meet the standard in INA § 212(i), the hardship must be greater than 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.

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.

The AAO therefore finds that the applicant failed to establish extreme hardship to his qualifying relatives as required under INA § 212(h), 8 U.S.C. § 1186(h) and that waiver is therefore unavailable. Because the applicant has been found statutorily ineligible, the AAO need not

address whether the applicant merits 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.