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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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[Redacted]

FILE: [Redacted] Office: MIAMI Date: **MAR 03 2009**

IN RE: [Redacted]

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:
[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).

Michael Shumway

for 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 who resides in Miami, Florida. Her father is a United States legal permanent resident (L.P.R.) and she has three U.S. citizen daughters. The applicant filed for adjustment of status pursuant to the Cuban Adjustment Act and was found 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 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 reside in the United States with her father and children.

The applicant also filed a previous Form I-601, Application for Waiver. The instant decision, however, is concerned with the waiver application filed May 12, 2006 and denied September 20, 2006. Nevertheless, all of the evidence in the record will be considered, notwithstanding that it may have been submitted with the previous application.

As to the instant waiver application, 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. The application was denied accordingly. On appeal, counsel asserted that denial of the waiver application would result in extreme hardship to the applicant and her family.

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 May 24, 1996 the applicant was convicted, pursuant to her pleas, of a violation of 18 U.S.C. § 472, possession of counterfeit obligations, and a violation of 18 U.S.C. § 371, conspiracy to pass counterfeit obligations. The applicant was placed on two years probation on each of those counts, the sentences to be served concurrently. (Case number 95 287 CR T 17C)

Possession or passing of counterfeit obligations is a crime involving moral turpitude. *U.S. v. Wilkerson*, 469 F.2d 963 (5th Cir. 1972) *cert. denied*, 410 U.S. 986 (1973). *Matter of Martinez*, 16 I. & N. Dec. 336 (BIA 1977). *Matter of Castro*, 19 I. & N. Dec. 692 (BIA 1988). Conspiracy has been found to be a crime involving moral turpitude where the objective of the conspiracy is a crime of moral turpitude. *See Jordan v. De George*, 341 U.S. 223 (1951); *see also Omagah v. Ashcroft*, 288 F.3d 254 (5th Cir. 2002), *Matter of Short*, Interim Decision 3125 (BIA 1989). Thus, the applicant's conviction for possession of counterfeit obligations and her conviction of conspiracy to pass counterfeit obligations are both crimes involving moral turpitude.

The waiver application in this matter indicates that the applicant was born on October 17, 1971 and was over 18 years of age when convicted and at all other salient times. She thus does not meet the requirements for an exception set forth in section 212(a)(2)(A)(ii)(I) of the Act.

The maximum penalty for a violation of 18 U.S.C. § 472 is 20 years imprisonment. The maximum penalty for a violation of 18 U.S.C. § 371 is imprisonment for five years. The applicant does not, therefore, qualify for the exception set forth in 212(a)(2)(A)(ii)(II) of the Act.

The AAO find that because she was convicted of a crime involving moral turpitude when she 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). 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) . . . if

(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).

In a brief filed to support the instant appeal, counsel noted that the father of the two older children is now dead, and that if the applicant is forced to return to Cuba they would be obliged either to follow her or to live without either their mother or father. This office agrees that those are the two alternatives. Although the applicant listed her father, a U.S. L.P.R., on the waiver application as a relative through whom she claims eligibility for waiver, she provided no evidence or argument that her departure would adversely affect him.

In a notarized statement, dated June 22, 2000, the applicant noted that her father is 78 years old. She further noted that the younger of her two brothers is 30 years old, single, lives with her father, and has no children or child care experience, and that the older of her brothers has his own family. The applicant stated that her mother is dead and concluded that none of her family members would be able to care for her children if she were deported, thus necessitating foster care.

Whether the applicant's father would be unable to care for the applicant's children is unclear, absent sufficient probative evidence pertinent to his health. Further, the applicant appears to be claiming that one of her brothers would be unable to care for her children because he has a family, and the other would be unable to care for them because he does not. The applicant has not submitted evidence sufficient to convince this office that her family in the United States is unable or unwilling to care for her children.

The applicant stated that she has no immediate family in Cuba, but that her father has two sisters, the applicant's aunts, there. The applicant stated that she has not been in contact with those aunts, and that they likely would decline to allow her to live with them, as they would then suffer opprobrium for harboring a U.S. citizen.

The applicant does not indicate that she has even attempted to contact her family members in Cuba to discuss the possibility of finding a home with them. The applicant's dismissal of that possibility is insufficient to demonstrate to the AAO that she would be unable to live with them.

The applicant stated that if she returns to Cuba she will be prosecuted for her illegal departure, which she asserts would unfavorably affect her children. The applicant, however, provided no evidence that such a prosecution is likely.

The applicant also stated that her oldest child suffers from asthma, and that medicine is scarce in Cuba. The record contains a letter, dated June 21, 2000, from an Advanced Registered Nurse Practitioner, confirming that the applicant's oldest son is under her care for asthma and stating that "It would be in the child's best interest not to be moved from his current home." That letter does not state the severity of the applicant's son's asthma, or why he should not change residences, or what might result if he does move.

The applicant asserted that she and her children would be denied food rations, housing, and medical care, but provided no evidence to support that assertion. In a brief filed with a previous waiver application, previous counsel also stated that, if she went to Cuba, the applicant, and any of her children who accompanied her, would likely be denied housing, food, medication, and employment. Previous counsel also provided no evidence, authority, or argument to support that assertion.

Counsel provided a printout of web content, from the website of Human Rights Watch, stating that Cuba is undemocratic and repressive. Counsel cited a State Department report for the proposition that the *per capita* income in Cuba is \$3,000. Counsel pointed out that the applicant's children have all been raised in the United States and have no family ties to Cuba. Counsel stated that relocating them to Cuba would cause them emotional and economic hardship.

Initially the AAO notes, as it did above, that the applicant's children would not be required to join her in Cuba if she is deported. That Cuba's government might be fairly characterized as undemocratic, that it represses dissent, and that it has a low *per capita* income are all factors to be considered, but those factors will not directly affect the applicant's children if they remain in the United States, and hardship to the applicant is not an issue in this adjudication.

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 children or father 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 spouse 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 (9th Cir. 1991), *Perez v. INS*, 96 F.3d 390 (9th 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 her U.S. legal permanent resident father or U.S. citizen children 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.