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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **NOV 04 2009**

IN RE: [REDACTED]

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

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

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).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, and 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 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 committed 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 remain in the United States with her lawful permanent resident daughters.

The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) pursuant to the Cuban Adjustment Act on April 23, 2007. The applicant filed an Application for Waiver of Grounds of Inadmissibility (Form I-601) on December 11, 2007.

The Director found that the applicant failed to establish extreme hardship to a qualifying relative, and denied the waiver application accordingly. *Decision of the Director.* On appeal, the applicant asserts that her two daughters will suffer extreme hardship if she is denied a waiver. *See Form I-290B, Notice of Appeal.*

In support of the waiver application, the applicant submitted several letters; a letter from her eldest daughter; copies her daughters' permanent resident cards, and Florida state medical verification forms. The entire record has been reviewed in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act provides, 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--

...

- (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).

8 U.S.C. § 1182(a)(2)(A).

The Board of Immigration Appeals (BIA) has “observed that moral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one’s fellow man or society in general.” *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992). In order to determine whether a conviction involves moral turpitude, the decision-maker must “look first to statute of conviction rather than to the specific facts of the alien’s crime.” *Matter of Silva-Trevino*, 24 I&N Dec. 687, 688 (A.G. 2008).

The record shows that on June 29, 2005, the applicant was charged with false and fraudulent insurance claims/staged crash in violation of section 817.234(9) of the Florida Statutes, and third degree grand theft in violation of section 812.014(2)(c) of the Florida Statutes. *See Information*. On March 30, 2006, the Eleventh Judicial Circuit Court, Miami-Dade County, Florida, convicted the applicant of the charge of grand theft, a third degree felony punishable by a maximum of five years imprisonment. *See Finding of Guilt and Order of Withholding Adjudication*; *see also* section 775.082(3)(d) of the Florida Statutes (stating that a person who has been convicted of a third degree felony may be punished “by a term of imprisonment not exceeding 5 years”). The false insurance claim charge was dismissed, *see Finding of Guilt and Order of Withholding Adjudication*, and the applicant was placed on probation for a period of one year, *see Orders of Supervision*.

At the time of the applicant’s conviction, Florida Statutes § 812.014 provided, in pertinent part:

- (1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:
 - (a) Deprive the other person of a right to the property or a benefit from the property.
 - (b) Appropriate the property to his or her own use or to the use of any person not entitled to the use of the property.
- (2) . . .
 - (c) It is grand theft of the third degree and a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, if the property stolen is:

2. Valued at \$5,000 or more, but less than \$10,000.

The Board has determined that to constitute a crime involving moral turpitude, a theft offense must require the intent to permanently take another person’s property. *See Matter of Grazley*, 14 I&N Dec. 330, 333 (BIA 1973) (“Ordinarily, a conviction for theft is considered to involve moral turpitude

only when a permanent taking is intended.”). The AAO notes that the applicant’s statute of conviction is divisible because it may be violated by either permanently or temporarily depriving another person of the right or benefit of that person’s property.

The applicant has not presented, and the AAO is unaware of any prior case in which a conviction has been obtained under Florida Statutes § 812.014 for conduct not involving moral turpitude. Nevertheless, in accordance with the language of *Silva-Trevino*, the AAO will review the record to determine if the statute was applied to conduct not involving moral turpitude in the applicant’s own criminal case. The AAO notes that the documents comprising the record of conviction are inconclusive as to whether the applicant acted with intent to permanently deprive or to temporarily deprive another person of that person’s property.

However, the record contains a complaint/arrest affidavit dated June 2, 2005, stating:

Investigation by the Department of Financial Services, Fraud Division, revealed that the accident dated July 6, 2004, in which defendant [REDACTED] was one of the passengers, was staged. Sworn statements were obtained from several of the participants admitting that the accident was staged. The statements indicated that all the parties involved met prior to discuss the manner in, [sic] which the accident would be done. As a result of this accident, the following personal injury protections’ [sic] claims were filed by numerous clinics located in the Miami area, for the alleged medical treatments of these participants . . .

Complaint/Arrest Affidavit. The affidavit states that the applicant billed Direct Insurance in the amount of \$5,980 for alleged treatment at the Miami Health Life Clinic. *Id.* Further, the criminal information charged that the applicant:

On or between July 09, 2004 and August 10, 2004 . . . did endeavor to obtain or use U.S. coin or currency value of five thousand dollars (\$5000.00) or more, but less than ten thousand dollars (\$10,000.00), the property of [REDACTED], as owner or custodian, with the intent to either temporarily or permanently deprive said owner or custodian of a right to the said property or a benefit therefrom, or to appropriate the same to said defendant’s own use or to the use of a person not entitled thereto . . .

Information. In *Matter of Grazley*, 14 I&N Dec. 330, 333 (BIA 1973), the BIA found it reasonable to assume that a conviction for theft involving cash involved a permanent taking. Similarly, in *Matter of Jurado*, 24 I&N Dec. 29, 33-34 (BIA 2006), the Board found that violation of a retail theft statute involved moral turpitude because the nature of retail theft is such that it is reasonable to assume such an offense would be committed with the intention of retaining merchandise permanently.

The reasoning in *Grazley* and *Jurado* is applicable to this case. Based on the evidence in the record, the AAO finds it reasonable to assume that the applicant’s conviction for grand theft involved the intent to retain the money permanently. She was thus convicted of knowingly taking the property of

another with intent to permanently deprive that person of the property, a crime involving moral turpitude, and is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph[] (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 [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

In order to obtain a section 212(h) waiver, an applicant must show that the bar imposes an extreme hardship on the applicant’s U.S. citizen or lawfully resident spouse, parent, son, or daughter. *See* 8 U.S.C. § 1182(h). Hardship to the applicant or to other family members may not be considered, except to the extent that this hardship affects the applicant’s qualifying relative. *See id.* (omitting consideration of hardship to the applicant). Additionally, extreme hardship to the qualifying relative must be established in the event that he or she accompanies the applicant to the home country, and in the event that he or she remains in the United States. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-68 (BIA 1999) (considering the hardships of both family separation and relocation). Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion in favor of the waiver. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996) (en banc).

The concept of extreme hardship to a qualifying relative “is not . . . fixed and inflexible,” and the determination is based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565. In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (BIA) set forth a non-exhaustive list of factors relevant to determining whether an alien has established extreme hardship to a qualifying relative. These factors include: 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. Family separation is also an important calculation in the extreme hardship analysis. *See, e.g., Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (per curiam) (“When the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.”); *Matter of Lopez-Monzon*, 17 I&N Dec. 280 (Commr. 1979) (noting in the context of a waiver under section 212(i) of the Act that the intent of the waiver is to provide for the unification of families and to avoid the hardship of separation).

Additionally,

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, e.g., economic detriment due to loss of a job or efforts ordinarily required in relocating or adjusting to life in the native country. Such ordinary hardships, while not alone sufficient to constitute extreme hardship, are considered in the assessment of aggregate hardship.

Matter of O-J-O-, 21 I&N Dec. 381, 383 (BIA 1996) (internal quotation marks and citation omitted). However, “[t]he common results of deportation or exclusion are insufficient to prove extreme hardship.” *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that mere economic detriment and emotional hardship caused by severing family and community ties are common results of deportation and do not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Ninth Circuit held that economic hardship and adjustment difficulties did not constitute hardship that was unusual or beyond that which would normally be expected upon deportation. In *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968), the BIA held that separation of family members and financial difficulties alone do not establish extreme hardship unless combined with more extreme impact. In *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), the U.S. Supreme Court held that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

The record reflects that that the applicant has two daughters who are natives of Cuba and U.S. lawful permanent residents. See *Birth Certificates for [REDACTED] and [REDACTED]*. The oldest daughter is 20 years old, and the youngest daughter is almost 14 years old. See *id.* In support of the hardship claims, the applicant’s daughter [REDACTED] states that her mother “is our leader, our protector and she is [her] best friend.” *Letter from [REDACTED]* She requests a grant of the waiver “so that we can all remain together and live the American dream of freedom and wonderful opportunities.” *Id.* The applicant states that her youngest daughter has a “learning problem and she is very attached to [the applicant].” *Notice of Appeal*. The applicant helps her daughter with her homework, and “she depends [on the applicant] for everything.” *Id.* The applicant states that her “daughters are very affected by this problem,” and they need her because life in this country is difficult for immigrants. *Applicant’s Letter*, dated Aug. 1, 2009.

The applicant also states that she is suffering from a “nerve disease.” *Id.* The Florida state medical forms in the record indicate that the applicant has been diagnosed with “schizoaffective disorder.” See [REDACTED], dated July 24, 2007. Without immigration status, the applicant states that it is difficult for her to obtain all of the medications that she needs. *Applicant’s Letter*, dated Aug. 1, 2009. Additionally, it appears that the applicant is unable to work due to her medical condition. See *Applicant’s Letter*, dated Oct. 6, 2008. Although the record does not contain a marriage certificate, the records suggests that the applicant’s husband resides in the United States with the family. See *Form I-485; Applicant’s Letter*, dated Aug. 1, 2009. Regarding financial hardship, the applicant states that her husband earns “just enough for rent and the electric [bill] and food.” *Applicant’s Letter*, dated Aug. 1, 2009.

Although the record suggests that family separation caused by the denial of the waiver could cause various hardships to the applicant's daughters, the evidence presented is not sufficient to support a claim of hardship that rises beyond the common results of removal or inadmissibility to the level of extreme hardship. First, the emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Here, the applicant has not presented any evidence that the emotional hardships faced by her daughters would be unusual or beyond that which would normally be expected upon deportation or inadmissibility. Second, the applicant has not presented evidence to support her allegations of her daughter's learning disability, such as medical or school records. Third, there is insufficient evidence in the record regarding the family's financial situation to show that the denial of the waiver would result in extreme financial hardship. *See INS v. Jong Ha Wang*, 450 U.S. 139 (1981) (holding that the mere showing of economic detriment is insufficient to warrant a finding of extreme hardship). Fourth, the applicant's own medical hardships are not calculated in the extreme hardship analysis. *See* 8 U.S.C. § 1182(h) (omitting consideration of hardship to the applicant)

Additionally, the applicant has not provided any evidence regarding the hardships that her daughters would suffer if they were to relocate to Cuba to live with the applicant. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565 (setting forth list of relevant hardship considerations). For instance, the record is silent regarding the daughters' family ties to U.S. citizens or lawful permanent residents in the United States, their family ties outside the United States, country conditions in Cuba, the financial consequences of departure, or any significant health conditions that would be impacted by relocation. *Id.*

In sum, although the applicant has presented some evidence of harm based on family separation, the record does not contain sufficient evidence to show that the difficulties encountered by the applicant's daughters, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. *See Perez*, 96 F.3d at 392; *Matter of Pilch*, 21 I&N Dec. at 631. Although the distress caused by separation from one's family is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon removal. *See id.* The AAO therefore finds that the applicant has failed to establish extreme hardship to a qualifying relative, as required under section 212(h) of the Act.

As the applicant has failed to establish the requisite extreme hardship, we do not reach the issue of whether she merits a waiver as a matter of discretion.

In proceedings for an application for a waiver of grounds of inadmissibility under section 212(h) of the Act, the applicant bears the burden of proof to establish his or her eligibility. *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.