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U. S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: OCT 04 2010

IN RE: Applicant: [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:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

for 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 been convicted of a crime involving moral turpitude. The applicant is the spouse of a lawful permanent resident, the father of two U.S. citizens and the stepfather of a lawful permanent resident. He 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.

The Director found that the applicant had failed to establish that the bar to his admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. *Director's decision*, dated April 2, 2010.

On appeal, the applicant's spouse states that she and their children will experience extreme hardship if the applicant is returned to Cuba. She submits additional evidence of extreme hardship. *Appeal submission*, dated May 24, 2010.

In support of the application, the record contains, but is not limited to, counsel's brief; statements from the applicant's spouse and the applicant's prior spouse; court records documenting child support payments; statements of support from friends of the applicant; a psychological evaluation of the applicant's spouse; letters from the applicant's employers; documentation of the applicant's earnings; a statement relating to the applicant's human rights activity and country conditions materials on Cuba. The entire record was reviewed and considered in arriving at a 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 [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), . . . 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

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral 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....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required mens rea may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The record shows that on February 17, 2004, the applicant pled guilty to one count of aggravated battery with a deadly weapon in violation of section 784.045(1)(a)(2) of the Florida Statutes (Fl. Stat.) and one count of battery in violation of Fl. Stat. § 784.03, with adjudication withheld.

At the time of the applicant's conviction, Fl. Stat. § 784.045 provided:

(1)(a) A person commits aggravated battery who, in committing battery:

1. Intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or

2. Uses a deadly weapon.

(b) A person commits aggravated battery if the person who was the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant.

(2) Whoever commits aggravated battery shall be guilty of a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The Eleventh Circuit Court of Appeals has found a conviction under Fl. Stat. § 784.045(1)(a) to be a conviction for a crime involving moral turpitude. *Sosa-Martinez v. U.S. Attorney General*, 420 F.3d 1338, 13341-13342 (11th Cir. 2005). Further, the Board of Immigration Appeals (BIA) has consistently viewed assault and battery with a deadly weapon as a crime involving moral turpitude in that "the knowing use or attempted use of deadly force is deemed to be an act of moral depravity that takes the offense outside the 'simple assault and battery' category." *See Matter of Sanudo*, 23 I&N Dec. 968, 971 (BIA 2006). Accordingly, the AAO finds the applicant to have been convicted of a

crime involving moral turpitude and to be inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act.¹

As the crime committed by the applicant involved the use of deadly weapon, the AAO also finds the applicant to have committed a violent or dangerous crime and to be subject to the heightened discretionary standard set forth in the regulation at 8 C.F.R. § 212.7(d), which provides:

The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

Therefore, to establish eligibility for a waiver of inadmissibility in the present case, the applicant must show that "extraordinary circumstances" warrant its approval. Extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the applicant's admission would result in exceptional and extremely unusual hardship. *Id.* Finding no evidence of foreign policy, national security, or other extraordinary equities, the AAO will consider whether the applicant has "clearly demonstrate[d] that the denial of . . . admission as an immigrant would result in exceptional and extremely unusual hardship" to a qualifying relative. *Id.* We note that the regulatory standard of exceptional and extremely unusual hardship found in 8 C.F.R. § 212.7(d) is more restrictive than the extreme hardship standard set forth in section 212(h) of the Act. *Cortes-Castillo v. INS*, 997 F.2d 1199, 1204 (7th Cir. 1993).

In *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001), the BIA determined that exceptional and extremely unusual hardship in cancellation of removal cases under section 240A(b) of the Act is hardship that "must be 'substantially' beyond the ordinary hardship that would be expected when a close family member leaves this country." However, the applicant need not show that hardship would be unconscionable. *Id.* at 61. The AAO notes that the exceptional and extremely unusual hardship standard in cancellation of removal cases is identical to the standard put forth by the Attorney General in *Matter of Jean*, *supra*, and codified at 8 C.F.R. § 212.7(d).

The BIA stated that in assessing exceptional and extremely unusual hardship, it would be useful to view the factors considered in determining extreme hardship. *Id.* at 63. In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the BIA provided a list of factors it deemed relevant in determining whether an alien has established the lower standard of extreme hardship. The factors

¹ The applicant's crime is not subject to the petty offense sentence in section 212(a)(2)(ii)(II) of the Act as it carried a prison sentence of up to 15 years. Accordingly, the AAO does not find it necessary to consider whether the applicant's conviction for battery under Fl. Stat. § 784.03 is also a conviction for a crime involving moral turpitude.

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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *Id.*

In *Monreal*, the BIA provided additional examples of the hardship factors it deemed relevant for establishing exceptional and extremely unusual hardship:

[T]he ages, health, and circumstances of qualifying lawful permanent resident and United States citizen relatives. For example, an applicant who has elderly parents in this country who are solely dependent upon him for support might well have a strong case. Another strong applicant might have a qualifying child with very serious health issues, or compelling special needs in school. A lower standard of living or adverse country conditions in the country of return are factors to consider only insofar as they may affect a qualifying relative, but generally will be insufficient in themselves to support a finding of exceptional and extremely unusual hardship. As with extreme hardship, all hardship factors should be considered in the aggregate when assessing exceptional and extremely unusual hardship.

23 I&N Dec. at 63-4.

In the precedent decision issued the following year, *Matter of Andazola-Rivas*, the BIA noted that, "the relative level of hardship a person might suffer cannot be considered entirely in a vacuum. It must necessarily be assessed, at least in part, by comparing it to the hardship others might face." 23 I&N Dec. 319, 323 (BIA 2002). The issue presented in *Andazola-Rivas* was whether the Immigration Judge correctly applied the exceptional and extremely unusual hardship standard in a cancellation of removal case when he concluded that such hardship to the respondent's minor children was demonstrated by evidence that they "would suffer hardship of an emotional, academic and financial nature," and would "face complete upheaval in their lives and hardship that could conceivably ruin their lives." *Id.* at 321 (internal quotations omitted). The BIA viewed the evidence of hardship in the respondent's case and determined that the hardship presented by the respondent did not rise to the level of exceptional and extremely unusual. The BIA noted:

While almost every case will present some particular hardship, the fact pattern presented here is, in fact, a common one, and the hardships the respondent has outlined are simply not substantially different from those that would normally be expected upon removal to a less developed country. Although the hardships presented here might have been adequate to meet the former "extreme hardship" standard for suspension of deportation, we find that they are not the types of hardship envisioned by Congress when it enacted the significantly higher "exceptional and extremely unusual hardship" standard.

23 I&N Dec. at 324.

However, the BIA in *Matter of Gonzalez Recinas*, a precedent decision issued the same year as

Andazola-Rivas, clarified that “the hardship standard is not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief.” 23 I&N Dec. 467, 470 (BIA 2002). The BIA found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The BIA noted that these factors included her heavy financial and familial burden, lack of support from her children’s father, her U.S. citizen children’s unfamiliarity with the Spanish language, lawful residence of her immediate family, and the concomitant lack of family in Mexico. 23 I&N Dec. at 472. The BIA stated, “We consider this case to be on the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship standard will be met.” *Id.* at 470.

The AAO now turns to a consideration of whether the record establishes that a qualifying relative will experience exceptional and extremely unusual hardship if the applicant’s waiver application is denied. We note such hardship must be established whether the qualifying relative accompanies the applicant or remains in the United States as he or she is not required to depart the United States as a consequence of the applicant’s inadmissibility.

Two distinct factual scenarios exist when a waiver application is denied: either the qualifying relative will join the applicant to reside abroad or the qualifying relative will remain in the United States. Ascertaining the actual course of action that will be taken is complicated by the fact that an applicant may easily assert a plan for the qualifying relative to relocate abroad or to remain in the United States depending on which scenario presents the greatest prospective hardship, even though no intention exists to carry out the alleged plan in reality. *Cf. Matter of Ige*, 20 I&N Dec. 880, 885 (BIA 1994) (addressing separation of minor child from both parents applying for suspension of deportation). Thus, the AAO interprets the statutory language of the various waiver provisions in section 212 of the Act to require an applicant to establish extreme hardship to his or her qualifying relative(s) under both possible scenarios. To endure the hardship of separation when extreme hardship could be avoided by joining the applicant abroad, or to endure the hardship of relocation when extreme hardship could be avoided by remaining in the United States, is a matter of choice and not the result of removal or inadmissibility. As the Board of Immigration Appeals (BIA) stated in *Matter of Ige*:

[W]e consider the critical issue . . . to be whether a child would suffer extreme hardship if he accompanied his parent abroad. If, as in this case, no hardship would ensue, then the fact that the child might face hardship if left in the United States would be the result of parental choice, not the parent’s deportation.

Id. See also *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996).

The record reflects that the applicant is the spouse of a lawful permanent resident and the father of two U.S. citizens and a lawful permanent resident. The applicant’s spouse and children are all qualifying relatives for the purposes of determining exceptional and extremely unusual hardship under 8 C.F.R. § 212.7(d).

In a May 24, 2010 letter, the applicant’s spouse, a native of Cuba, states that she could not relocate to Cuba because of the current state of the country. She asserts that conditions in Cuba are very harsh, that she left Cuba because of these conditions and does not want this future for her children.

The applicant's spouse further asserts that communist oppression in Cuba is brutal and widespread, and that the applicant could face prejudice or even imprisonment upon return. She states that the applicant previously belonged to a human rights organization and will face hostile treatment based on his human rights activities between 1998 and 2001.

The record contains substantial documentation of Cuba's repressive government and its current and past abuses of human rights. It also includes a May 24, 2010 statement from [REDACTED] who identifies himself as the former Secretary of Public Relations for the [REDACTED]. [REDACTED] indicates that the applicant was a member of the group from 1998 until he left Cuba in 2002, and that he reported on the underpayment of farmers in [REDACTED] province and provided information to members of the foreign press. [REDACTED] also indicates that the applicant became a municipal deputy in the city of [REDACTED] and, thereafter, the Provincial Executive in [REDACTED]. He further states that the applicant attempted to leave Cuba on several occasions without obtaining exit permission from Cuban authorities and was fined and detained for several months in the Technical Department of Investigations.

The AAO acknowledges the applicant's past involvement and leadership role in a Cuban opposition group and the Cuban government's history of human rights abuses, particularly in dealing with organizations and individuals opposed to its policies. It further takes note of the applicant's spouse's statement that she cannot return to Cuba because of the harsh conditions there, which are demonstrated by the applicant's submission of country conditions materials. When the normal difficulties and disruptions created by relocation and the fact that the applicant's spouse would be returning to Cuba with a former human rights activist are considered in the aggregate, the AAO finds that the applicant has established that his spouse would experience exceptional and extremely unusual hardship if she returned with him to Cuba.

Although the applicant's spouse indicates in her May 24, 2010 letter that she does not want to raise her children in Cuba because of the conditions there, the AAO finds that the applicant has not addressed what specific impacts relocation to Cuba would have on his children. The AAO is therefore, unable to find that relocation to Cuba would result in extreme hardship for them.

The AAO now considers the hardship that would result if the applicant is removed and his spouse and children remain in the United States.

The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of the family relationship considered. For example, in *Matter of Shaughnessy*, the Board considered the scenario of parents being separated from their soon-to-be adult son, finding that this separation would not result in extreme hardship to the parents. *Id.* at 811-12; *see also U.S. v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000) ("Mr. Arrieta was not a spouse, but a son and brother. It was evident from the record that the effect of the deportation order would be separation rather than relocation."). In *Matter of Cervantes-Gonzalez*, the BIA considered the scenario of the respondent's spouse accompanying him to Mexico, finding that she would not experience extreme hardship from losing "physical proximity to her family" in the United States. 22 I&N Dec. at 566-67.

The decision in *Cervantes-Gonzalez* reflects the norm that spouses reside with one another and establish a life together such that separating from one another is likely to result in substantial

hardship. It is common for both spouses to relocate abroad if one of them is not allowed to stay in the United States, which typically results in separation from other family members living in the United States. Other decisions reflect the expectation that minor children will remain with their parents, upon whom they usually depend for financial and emotional support. *See, e.g., Matter of Ige*, 20 I&N Dec. at 886 (“[I]t is generally preferable for children to be brought up by their parents.”). Therefore, the most important single hardship factor may be separation, particularly where spouses and minor children are concerned. *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *Cerrillo-Perez*, 809 F.2d at 1422.

Regardless of the type of family relationship involved, the hardship resulting from family separation is determined based on the actual impact of separation on an applicant, and all hardships must be considered in determining whether the combination of hardships takes the case beyond the consequences ordinarily associated with removal or inadmissibility. *Matter of O-J-O-*, 21 I&N Dec. at 383. Nevertheless, though the AAO requires an applicant to show that a qualifying relative would experience extreme hardship both in the event of relocation and in the event of separation, in analyzing the latter scenario, we give considerable, if not predominant, weight to the hardship of separation itself, particularly in cases involving the separation of spouses from one another and/or minor children from a parent. *Salcido-Salcido*, 138 F.3d at 1293.

In the present case, counsel states that the applicant’s children will be devastated emotionally, psychologically and spiritually if their father is returned to Cuba. Counsel reports that the applicant is worried that the emotional impact of his removal will scar his children for life. Counsel further contends that the potential removal of the applicant has already affected his children’s lives and that they are very anxious and depressed. He notes that the applicant’s children are suffering but are trying to keep their suffering from their father, which creates further emotional problems for them. The applicant’s children, counsel asserts, are also economically dependent on the applicant as he pays for all of their expenses, including those for his daughter from his previous marriage. Counsel states that if the applicant is removed, he will no longer be able to support his children.

In a May 25, 2010 statement, the applicant’s former spouse asserts that he pays monthly child support and provides her with an additional \$400 each month. She also states that her daughter is very attached to the applicant and that since their divorce, her daughter’s attitude toward school has changed and her grades have dropped. She contends that it would be extremely difficult for her daughter to be permanently separated from her father.

The applicant’s spouse, in a January 20, 2010 affidavit, indicates that she is worried about the impact of the applicant’s removal on their son, who is very attached to his father. She asserts that he will be traumatized by the loss of his father because he is so young and does not understand what is going on. The applicant’s spouse also states that her daughter from her previous marriage is attached to the applicant and that he has become an important person in her life.

In a subsequent letter, written on May 24, 2010, the applicant’s spouse addresses the economic hardship her family would face in the applicant’s absence. She contends that her family needs two salaries and that she would not be able to provide for her children by herself. The applicant’s removal, she asserts, would result in a financial crisis. The applicant’s spouse also states that it is extremely important for her children to have the applicant involved in their education and their lives. She reports that the applicant’s oldest child’s grades have dropped and that her behavior has not been

the same since she learned of her father's immigration problems.

While the AAO notes the emotional hardship claims made on behalf of the applicant's children, it does not find the record to support them. The applicant has submitted no documentary evidence (e.g., evaluations of the applicant's children prepared by a licensed mental health professional, reports from school counselors or school records) that indicates how the applicant's children have already been affected by their father's immigration situation or would be affected by his absence. Without supporting documentation, the assertions of counsel are not sufficient to meet the burden of proof in these proceedings. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. See *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 record also fails to demonstrate the economic impacts of the applicant's removal on his children. Although the AAO acknowledges that the applicant's income in Cuba would not be sufficient to assist his family financially from outside the United States, we nevertheless find that the record does not contain sufficient evidence to establish that his children would experience economic hardship as a result. The record includes a printout from the Circuit Court of the Eleventh Judicial Circuit, Dade County, Florida that demonstrates the applicant is paying child support for his oldest child. It does not, however, document that he also provides his former spouse with an additional \$400 each month. Neither does the record include any documentary evidence (e.g., evidence of income and monthly financial obligations) that would establish his former spouse needs the income he currently provides in order to support their daughter.

The applicant has also failed to submit documentation in support of his spouse's claims that the family requires both of their incomes and that his removal would result in a financial crisis. The record includes no documentation of the income that the applicant's spouse receives from her employment, nor any evidence of the family's monthly financial obligations. The AAO notes that the financial documentation included in the record relates only to the applicant's income. Therefore, based on the record before us, the AAO does not find the applicant to have established that his children would experience exceptional and extremely unusual hardship if he is returned to Cuba and they remain in the United States.

With regard to the hardship that would be experienced by the applicant's spouse, counsel asserts that she is dependent on the applicant for emotional, psychological and economic reasons, that she depends on his help to raise the children and that he helps with other expenses, such as car repairs. Counsel asserts that the applicant's spouse is experiencing anxiety as a result of the applicant's immigration problems and has been diagnosed with clinical anxiety and depression. He further contends that trying to solve the applicant's immigration problems has placed a great strain on their marriage and that the applicant and his spouse continuously talk about their situation. Counsel also states that separation would have a negative economic impact on the applicant's spouse as the applicant would not be able to support her from Cuba. He notes that the applicant currently works for a company that handles medical services for others and that he does subcontractor work for them. The applicant's spouse, counsel states, works for this same company and, if the applicant is removed, she may lose her job.

In her January 20, 2010 affidavit, the applicant's spouse states that she and the applicant work together and that without his help and cooperation, she would not be able to sustain her business. She also states that if he is returned to Cuba, he would become an economic burden because she would have to send him money to help him survive. The applicant's spouse further asserts that if the applicant is removed, her ability to work will be affected and that she will become "useless in [her] job." She states that since she learned that the applicant could be returned to Cuba, she has been depressed and that her concerns about not being able to support her children by herself add to her emotional struggles. In her May 24, 2010 letter, the applicant's spouse asserts that the stress created by the applicant's immigration problems is affecting her health.

The record contains a January 21, 2010 psychological evaluation of the applicant's spouse prepared by licensed psychologist [REDACTED] [REDACTED] finds the applicant's spouse to be suffering from Generalized Anxiety Disorder and to have a Dependent Personality Disorder. She reports that the applicant's spouse is an emotionally fragile individual who has never had to manage on her own and that she would suffer extreme and severe psychological and emotional hardship if the applicant is removed.

While the input of any mental health professional is respected and valuable, the AAO notes that [REDACTED] findings are based on a single interview with the applicant's spouse and, moreover, are not entirely clear. [REDACTED] reports that she administered the Millon Clinical Multiaxial Inventory-III, a self-reporting personality inventory for adults, to the applicant and that while it revealed the presence of an anxiety disorder, it failed to indicate any major personality disturbances and [the applicant's spouse's] profile was "typical of 'normal' individuals who are undergoing psychosocial stressors and therefore are exhibiting troublesome symptoms that are largely situational and transient." However, [REDACTED] evaluation subsequently finds that the applicant is suffering from Dependent Personality Disorder and is "an emotionally fragile individual who has never had to manage on her own" and "does well as long as she has a secure environment and someone on whom she can depend." It is not clear to the AAO how both of these statements may be applied to the applicant's spouse. In that the evaluation is based on a single interview with the applicant's spouse and appears to reach conflicting conclusions as to whether the applicant's spouse has an underlying personality disorder that would affect her ability to function in the applicant's absence, the AAO finds it to be of limited value in determining exceptional and extremely unusual hardship.

The AAO also finds the record to lack the documentary evidence necessary to establish that the applicant's spouse would experience economic hardship in the applicant's absence. As previously noted, the applicant has not documented his spouse's income or the financial obligations she would face in his absence. The AAO also notes that in her January 20, 2010 affidavit the applicant's spouse states that she and the applicant work together, and that she would not be able to sustain her business without him. Again, no documentary evidence in the record establishes that the applicant and his spouse work together, that she is the owner of the business where they work or that her business is dependent on the applicant. Based on the evidence of record, the AAO does not find the applicant to have established that his spouse would suffer exceptional and extremely unusual hardship if he is returned to Cuba and she remains in the United States without him.

In that the applicant has not established that a qualifying relative would experience exceptional and extremely unusual hardship whether he or she relocates to Cuba or remains in the United States, the

applicant is not eligible for a favorable exercise of discretion under section 212(h)(2) of the Act.

In proceedings for application for waiver of grounds of inadmissibility under sections 212(h) and 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.