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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

**PUBLIC COPY**

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[Redacted]

FILE: [Redacted]

Office: MIAMI

Date:

JAN 10 2011

IN RE: Applicant: [Redacted]

PETITION: Application for Waiver of Grounds of Inadmissibility pursuant to section 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF PETITIONER:

[Redacted]

**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, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Miami, Florida, 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 crimes 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 U.S. citizen daughter and lawful permanent resident mother.

The district director concluded that the applicant failed to establish that her bar to admission would impose extreme hardship on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel for the applicant asserts that the applicant's daughter and mother will experience extreme hardship if the applicant is prohibited from residing in the United States. *Brief from Counsel* dated February 13, 2008.

In support of the application, the record contains, but is not limited to, a brief from counsel; statements from the applicant's mother, daughter, pastor, and friends; a psychological evaluation of the applicant's mother and daughter; copies of tax records for the applicant; a copy of the applicant's daughter's U.S. passport; a copy of the applicant's mother's lawful permanent resident card; a letter from the applicant's bank; a copy of the applicant's birth certificate, and; documentation relating to the applicant's arrests and criminal convictions. The entire record was reviewed and considered in rendering this decision.

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.

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.

In *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), the Attorney General articulated a new methodology for determining whether a conviction is a crime involving moral turpitude where the language of the criminal statute in question encompasses conduct involving moral turpitude and conduct that does not. First, in evaluating whether an offense is one that categorically involves moral turpitude, an adjudicator reviews the criminal statute at issue to determine if there is a “realistic probability, not a theoretical possibility,” that the statute would be applied to reach conduct that does not involve moral turpitude. *Id.* at 698 (citing *Gonzalez v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007)). A realistic probability exists where, at the time of the proceeding, an “actual (as opposed to hypothetical) case exists in which the relevant criminal statute was applied to conduct that did not involve moral turpitude. If the statute has not been so applied in any case (including the alien’s own case), the adjudicator can reasonably conclude that all convictions under the statute may categorically be treated as ones involving moral turpitude.” *Id.* at 697, 708 (citing *Duenas-Alvarez*, 549 U.S. at 193).

However, if a case exists in which the criminal statute in question was applied to conduct that does not involve moral turpitude, “the adjudicator cannot categorically treat all convictions under that statute as convictions for crimes that involve moral turpitude.” 24 I&N Dec. at 697 (citing *Duenas-Alvarez*, 549 U.S. at 185-88, 193). An adjudicator then engages in a second-stage inquiry in which the adjudicator reviews the “record of conviction” to determine if the conviction was based on conduct involving moral turpitude. *Id.* at 698-699, 703-704, 708. The record of conviction consists of documents such as the indictment, the judgment of conviction, jury instructions, a signed guilty plea, and the plea transcript. *Id.* at 698, 704, 708.

If review of the record of conviction is inconclusive, an adjudicator then considers any additional evidence deemed necessary or appropriate to resolve accurately the moral turpitude question. 24 I&N Dec. at 699-704, 708-709. However, this “does not mean that the parties would be free to present any and all evidence bearing on an alien’s conduct leading to the conviction. (citation omitted). The sole purpose of the inquiry is to ascertain the nature of the prior conviction; it is not an invitation to relitigate the conviction itself.” *Id.* at 703.

The record shows that, on August 31, 2000, the applicant pleaded guilty to eight criminal charges before the Circuit Court of the 11th Judicial Circuit, Dade County, Florida, including: two counts of fraudulent use of a credit card under Florida Statutes section 817.61; forgery - credit card under Florida Statutes section 831.01; two counts of uttering a forged instrument - credit card under Florida Statutes section 831.02; grand theft under Florida Statutes section 812.014(2)(c); forged credit card possession under Florida Statutes section 817.60(6)(b), and; unauthorized use or possession of a driver’s license or I.D. card under Florida Statutes section 322.212(1). She was sentenced to two years of probation, court costs, and restitution. Also on August 31, 2000, in a separate criminal proceeding, the applicant pleaded guilty to forged credit card possession under Florida Statutes section 817.60(6)(b) before the Circuit Court of the 11th Judicial Circuit, Dade County, Florida. She was sentenced to two years of probation, court costs, and restitution.

Florida Statutes section 817.61 (Fraudulent use of credit cards) states, in pertinent part:

A person who, with intent to defraud the issuer or a person or organization providing money, goods, services, or anything else of value or any other person, uses, for the

purpose of obtaining money, goods, services, or anything else of value, a credit card obtained or retained in violation of this part or a credit card which he or she knows is forged, or who obtains money, goods, services, or anything else of value by representing, without the consent of the cardholder, that he or she is the holder of a specified card or by representing that he or she is the holder of a card and such card has not in fact been issued violates this section.

Florida Statutes section 831.01 (Forgery) states, in pertinent part:

Whoever falsely makes, alters, forges or counterfeits a public record, or a certificate, return or attestation of any clerk or register of a court, public register, notary public, town clerk or any public officer, in relation to a matter wherein such certificate, return or attestation may be received as a legal proof; or a charter, deed, will, testament, bond, or writing obligatory, letter of attorney, policy of insurance, bill of lading, bill of exchange or promissory note, or an order, acquittance, or discharge for money or other property, or an acceptance of a bill of exchange or promissory note for the payment of money, or any receipt for money, goods or other property, or any passage ticket, pass or other evidence of transportation issued by a common carrier, with intent to injure or defraud any person, shall be guilty of a felony of the third degree.

The Board of Immigration Appeals (BIA) has held that the illegal use of a credit card is a crime involving moral turpitude. *Matter of Chouinard*, 11 I&N Dec. 839, 841 (BIA 1966). The BIA has further deemed forgery to be a crime involving moral turpitude. *Matter of Jimenez*, 14 I&N Dec. 442, 443 (BIA 1973). Florida Statutes section 817.61 requires an "intent to defraud," and Florida Statutes section 831.01 requires an "intent to injure or defraud." Neither section can be applied to reach conduct that does not involve moral turpitude. Thus, convictions under Florida Statutes sections 817.61 and 831.01 may be categorically deemed crimes involving moral turpitude. Accordingly, the record shows that the applicant has been convicted of multiple crimes involving moral turpitude, and she is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.

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

(1) 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 AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relatives that qualify are the applicant's daughter and mother. Hardship to the applicant is not relevant under the statute and will be considered only insofar as it results in

hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

As a qualifying relative is not required to depart the United States as a consequence of an applicant's inadmissibility, two distinct factual scenarios exist should a waiver application be 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, we interpret 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 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).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of deportation, removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-*

*Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. at 631-32; *Matter of Ige*, 20 I&N Dec. at 883; *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that “[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists.” *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator “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.” *Id.*

We observe that the actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., In re Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate).

Family separation, for instance, has been found to be a common result of inadmissibility or removal in some cases. *See Matter of Shaughnessy*, 12 I&N Dec. at 813. Nevertheless, family ties are to be considered in analyzing hardship. *See Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 565-66. The question of whether family separation is the ordinary result of inadmissibility or removal may depend on the nature of 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) (“[redacted] 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 Board 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 we require 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.

On appeal, counsel for the applicant asserts that the applicant's daughter and mother will experience extreme hardship if the applicant is prohibited from residing in the United States. *Brief from Counsel* dated February 13, 2008.

The applicant's mother states that she is 80 years old, and that she has suffered greatly in her life. *Statement from the Applicant's Mother*, dated December 4, 2007. The applicant's mother indicates that she is an infirm woman, and that she only has the applicant and the applicant's daughter to love and support. *Id.* at 1. She states that, should the applicant depart the United States, she would have no one in the world to care for her or to have as a family. *Id.* She provides that the applicant is a good daughter and mother. *Id.*

The applicant's daughter stated that she will experience grief, problems, distress, and hurt should the applicant be compelled to depart the United States. *Statement from the Applicant's Daughter*, dated November 28, 2007. She expressed that separating an only child from her mother is a major, life-changing, negative experience that would cause her irreparable damage. *Id.* She explains that her father left when she was six years old, and that they have had to meet their own needs in a new country. *Id.* She provided that her bond with the applicant is the strongest and most cherished aspect of her life, and that the applicant is the only person on whom she can truly rely. *Id.*

The applicant submitted an evaluation of her, her mother, and her daughter, conducted by [REDACTED] Faubel, a clinical psychologist. [REDACTED] indicated that she met with the applicant, the applicant's daughter, and the applicant's mother together, and that it was apparent that the applicant is the head of their household. *Report from [REDACTED]*, dated December 3, 2007. [REDACTED] indicated that the applicant's daughter was pregnant and facing raising her child as a single parent. *Id.* at 1. [REDACTED] indicated that the applicant's daughter reported sadness when she was separated from the applicant for two years as a child, and that she expressed that she would face significant emotional difficulties should she now become separated from the [REDACTED].

[REDACTED] indicated that the applicant's mother has always lived with the applicant and the applicant's daughter except a period of time when the applicant first came to the United States. *Id.* [REDACTED] stated that the applicant's mother suffers from depression, chronic reflux, sleep disturbance, arthritis, osteoporosis, and that she has been presenting with beginning symptoms of Alzheimer's type dementia - late onset. *Id.* [REDACTED] reported other medical conditions experienced by the applicant's mother, including surgery for cataracts and as part of treatment after a fall. *Id.* at 1-2. [REDACTED] asserted that the applicant's mother takes numerous medications and requires assistance with tasks such as bathing and using a restroom. *Id.* at 2. [REDACTED] stated that the applicant relocated her manicure business to her home so that she can watch her mother. *Id.*

Counsel asserts that the applicant's mother is an 80-year-old woman who wholly depends on the applicant. *Brief from Counsel* at 3. Counsel states that the applicant's daughter was pregnant as of February 13, 2008, and that as a single, unwed mother she would require the applicant's assistance. *Id.* at 4. Counsel provides that the applicant's daughter would lack adequate income to fund child care services, and that she wishes for her unborn child to be raised with the applicant. *Id.* Counsel asserts that the applicant's daughter would rely on the applicant to care for her child so that she can work to support the family. *Id.* Counsel contends that the report from [REDACTED] establishes the profound necessity of the applicant remaining United States with her daughter, and that the applicant's daughter will suffer extreme hardship should the applicant depart the United States.

Counsel asserts that the district director failed to consider all of the submitted evidence. *Id.* at 3.

Upon review, the applicant has not shown that a qualifying relative will suffer extreme hardship should the present waiver application be denied. The applicant has not shown that her daughter will experience extreme hardship should she remain in the United States without the applicant. It is first noted that counsel asserts that the applicant's daughter was pregnant and that she would endure hardships related to acting as a single mother for a newborn child. However, the applicant has not provided any documentation to show that her daughter was pregnant, or that she gave birth to a child. Thus, the record does not shown by a preponderance of the evidence that the applicant's daughter will face additional hardship due to having a child.

The record contains references to financial difficulty the applicant's daughter will experience should she lose the applicant's assistance. However, the applicant has not submitted any explanation or documentation of her daughter's income or expenses, such to show that she would be unable to meet her needs without the applicant.

The AAO has carefully examined the statements in the record regarding the applicant's daughter's emotional hardship, including the report from [REDACTED]. The report from [REDACTED] was generated based on a single session, thus it does not represent an ongoing relationship with a mental health professional or treatment for mental health disorder. [REDACTED] indicated that the applicant's daughter reported that she suffered significant psychological difficulty when previously separated from the applicant, and that she will endure emotional hardship should she again live apart from the applicant. The AAO acknowledges that the separation of a parent from a daughter often results in substantial psychological difficulty, and that the applicant's daughter will face emotional hardship should she be separated from the applicant. However, while unfortunate, this is a common consequence when individuals must reside abroad due to prior violations of U.S. immigration law. The applicant has not distinguished her daughter's emotional difficulty from that which is often expected.

All stated elements of hardship to the applicant's daughter, should she remain in the United States, have been considered in aggregate. Based on the foregoing, the applicant has not established that her daughter will suffer extreme hardship should she depart the United States and her daughter remain.

The applicant has not shown that her mother would suffer extreme hardship should she reside in the United States without the applicant. The record contains strong assertions regarding the applicant's mother's dependency on the applicant, largely due to her advanced age and health problems. However, the applicant has not submitted any medical documentation for her mother to support the

stated health problems. While [REDACTED] noted certain health problems suffered by the applicant's mother, she did not indicate that she reviewed any medical documentation to support her assertions. The applicant's mother is presently 82 years old, and it is understood that individuals of this age often face health challenges. However, without adequate documentation, the AAO is unable to conclude that the applicant's mother in fact requires or depends on assistance from the applicant.

The applicant provided federal income tax records that show that she claimed her mother as a dependent in 2006, yet not in 2005, 2004, 2003, or 2002. The applicant reported an income of \$6,323 for 2006, yet she has not provided an account of her or her mother's regular expenses. Nor has she indicated whether her mother has savings or income. The present appeal is dated February 14, 2008, however the applicant has not submitted any updated financial documentation since her 2006 federal income tax filing. Accordingly, the record lacks sufficient evidence to establish that the applicant's mother in fact solely relies on the applicant for financial support.

The applicant's mother expressed that she will endure significant psychological difficulty should she become separated from the applicant, and this assertion is supported by the evaluation from [REDACTED]. As discussed above, it is evident that the separation of parents and children often results in significant psychological hardship, and the record shows that the applicant's mother will face emotional difficulty should she reside apart from the applicant. [REDACTED] report reflects that the applicant is close with her mother, and that they have a history of residing together with the applicant's daughter. However, the applicant has not distinguished her mother's psychological challenges from those which are frequently experienced when a daughter resides apart from a parent due to inadmissibility.

All stated elements of hardship to the applicant's mother, should she reside apart from the applicant, have been considered in aggregate. Based on the foregoing, the applicant has not shown that her mother would face extreme hardship should the applicant depart the United States and she remain.

The applicant has not asserted that her mother or daughter will suffer hardship should they relocate to Cuba with the applicant to maintain family unity. In the absence of clear assertions from the applicant, the AAO may not speculate regarding difficulties that may be experienced by the applicant's relatives. In proceedings regarding an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Thus, the applicant has not established that her mother or daughter will suffer extreme hardship should they join her abroad.

Accordingly, the applicant has not shown that denial of the present waiver application "would result in extreme hardship" to a qualifying relative, as required for a waiver under section 212(h) of the Act. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings regarding a waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.