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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



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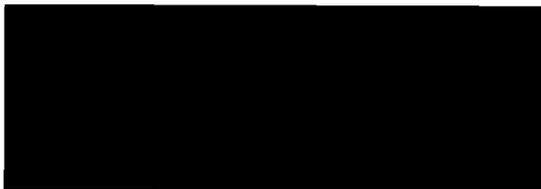
Date: JUN 10 2011 Office: MIAMI, FL
(WEST PALM BEACH, FL)

FILE: 

IN RE: Applicant 

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, 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 been convicted of a crime involving moral turpitude. The applicant's mother and son are U.S. citizens. He seeks a waiver of inadmissibility in order to reside in the United States.

The district director found that the applicant had failed to satisfy the requirements of either waiver provision under section 212(h)(1) of the Act and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *District Director's Decision*, at 7, dated December 17, 2008.

On appeal, counsel asserts that the applicant qualifies for a waiver under both provisions of section 212(h)(1) of the Act and the district director erroneously denied the waiver. *Form I-290*, at 2, received January 16, 2009.

The record includes, but is not limited to, medical records for the applicant and his mother, and the applicant's statement. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that the applicant was convicted on March 5, 1982 under Florida Statutes § 784.021(1)(a) of aggravated assault.

At the time of the applicant's conviction, Florida Statutes § 784.021 provided, in pertinent part:

- (1) An "aggravated assault" is an assault:
 - (a) with a deadly weapon without intent to kill;

An "assault" is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. Fl. Stat. Ann. § 784.011. In *Matter of Fualaau*, the BIA noted, "The crime of assault includes a broad spectrum of misconduct, ranging from relatively minor offenses, e.g., simple assault, to serious offenses, e.g., assault with a deadly weapon." 21 I&N Dec. 475, 447 (BIA 1996). The BIA noted further, "Assault with a deadly weapon has been held to be a crime involving moral turpitude." *Id.* (citing *Matter of Medina*, 15 I&N Dec. 611 (BIA 1976)(stating that assault with a deadly weapon under the Illinois Revised Statutes is a crime involving moral turpitude even if the perpetrator only engages in reckless misconduct.); *see also Matter of Sanudo*, 23 I&N Dec. 968, 971 (BIA 2006)("assault and battery with a deadly weapon has long been deemed a crime involving moral turpitude by both this Board and the Federal courts, because 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."))

Therefore, the AAO finds that the applicant committed a crime involving moral turpitude and he is inadmissible under section 212(a)(2)(A)(i)(I) of the Act.¹

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

(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, that:

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [Secretary] that -

- (i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
- (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and
- (iii) the alien has been rehabilitated; or

(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

¹ As the AAO has found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for a crime involving moral turpitude, it will not address whether his other convictions involve moral turpitude (Two assault convictions on November 5, 1990 under Florida Statutes § 784.011, possession of a short barreled shotgun on March 5, 1982 under Florida Statutes § 790.221, two counts of harassing phone calls on February 9, 1993 under Florida Statutes § 365.16(1)(B), trespass on November 5, 1990 under Florida Statutes § 810.08 and battery of a person greater than 65 years of age or older on December 12, 1990 under Florida Statutes § 784.03.)

hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien . . . ; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The AAO also finds that the applicant has committed a violent or dangerous crime (aggravated assault) and is 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, even assuming the applicant meets the requirements of section 212(h)(1)(A) of the Act, to establish eligibility for a waiver of inadmissibility, 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. 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. 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 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 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. The applicant’s mother and son are qualifying relatives for the purposes of determining exceptional and extremely unusual hardship under 8 C.F.R. § 212.7(d). No claims are made in regard to the applicant’s son, therefore the AAO will only address hardship to the applicant’s mother.

The first part of the analysis requires the applicant to establish exceptional and extremely unusual hardship to a qualifying relative in the event of relocation to Cuba. The AAO notes that the applicant’s mother has been living in the United States since 1989. The AAO also notes the applicant’s mother’s health problems as discussed below. However, there is no evidence that she cannot receive treatment in Cuba. There are no other contentions made in regard to this prong of the analysis. The record includes insufficient evidence of financial, medical, emotional or other types of hardship which establish that the applicant’s mother would experience exceptional and extremely unusual hardship if she relocated to Cuba.

The second part of the analysis requires the applicant to establish exceptional and extremely unusual hardship in the event that a qualifying relative remains in the United States. The applicant states that his mother lives with him; she suffers from osteoporosis, high blood pressure, a heart problem, beginning stages of Alzheimer’s disease, a hernia and ulcer, and mild dementia; she requires his help in everything; he prepares her food, tells her when to take her medicine, does her laundry, pays her bills, takes her to doctor’s appointments and helps her go to the bathroom; nobody else can take care of his mother; and his sister is 55 years old and not in good health, his other sister and two brothers are not interested in taking care of his mother, and his 33 year old son cannot take care of his mother

as he has a job with frequent travel. *Applicant's Statement*, dated January 6, 2009. The applicant's mother states that the applicant takes care of her as she is disabled; he takes her to her medical appointments and church; he is responsible for all of the household matters; and her life would be in danger if he was not present. *Applicant's Mother's Statement*, dated October 30, 2008. The applicant's mother's doctor states that the applicant's mother has hypertensive heart disease, hyperlipidemia, diverticulitis and early dementia; and she depends on the applicant for her social and medical needs. *Letter from Applicant's Mother's Doctor*, dated October 15, 2007.

The AAO notes that there is not supporting documentary evidence that the applicant's mentioned family members could not care for his mother. The record does not include letters from the mentioned family members confirming that they are unavailable or documentation of the applicant's 55 year old sister's health problems. Going on record without supporting documentation will not 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 AAO finds that there is insufficient evidence to find that the applicant's mother would suffer exceptional and extremely unusual hardship if she resided in the United States without the applicant.

A review of the documentation in the record fails to establish the existence of exceptional and extremely unusual hardship to a qualifying relative caused by the applicant's inadmissibility to the United States, as the first prong of the analysis has not been met. Accordingly, the AAO will not favorably exercise the Attorney General's (now Secretary's) discretion under section 212(h)(2) of the Act. As such, there is no purpose in evaluating eligibility under section 212(h)(1) of the Act or a discretionary finding upon both sections 212(h)(1) and (2) of the Act being met.

In proceedings for application for 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.