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

U.S. Citizenship and Immigration Services

[redacted]

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DATE: DEC 0 6 2012 Office: HIALEAH, FL FILE: [redacted]

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:

[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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** 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,

Michael Hammerschlag

for Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Hialeah, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that 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 Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of 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 conjunction with an application for adjustment of status, in order remain in the United States with his U.S. citizen mother and children in the United States.

The Field Office Director found that the applicant had failed to establish extreme hardship to the qualifying relative, and denied the Form I-601, Application for Waiver of Grounds of Inadmissibility, accordingly. *Field Office Director's Decision,* dated September 28, 2010.

On appeal, counsel asserts that the director failed to properly consider the elements on hardship with the circumstances peculiar to the applicant's case and contends that the applicant presented sufficient evidence of emotional hardship to the qualifying relatives upon separation, their financial dependence on the applicant, and of country conditions in Cuba to demonstrate extreme hardship.

The record of evidence includes, but is not limited to, counsel's brief, the statements of the applicant's common law wife and his U.S. citizen mother in the United States; birth certificates of the applicant's U.S. citizen children; a country conditions background report; and the applicant's conviction records. The entire record was reviewed and considered in rendering this decision on the appeal.

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

> (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 [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -
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> . . . .
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> > (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 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 record indicates that the applicant was paroled into the United States on or about February 28, 1993. On July 19, 1996, the applicant was convicted of Grand Theft in the First Degree in violation of section 812.014 of the Florida Statutes (F.S.A.) and Dealing in Stolen Property in violation of section 812.019 of the F.S.A, and was sentenced to probation on each charge. On February 20, 1996, the applicant was convicted of Grand Theft in the Third Degree in violation of F.S.A. § 812.019; Obtaining Goods valued in excess of $300 by Use of a False Credit Card under F.S.A. § 817.481; and Uttering Forged Instruments under F.S.A. § 831.02. He was sentenced to probation on all three counts. Lastly, the applicant was convicted of Grand Theft in the Second Degree under F.S.A. § 812.014 and Dealing in Stolen Property under F.S.A. § 812.019, and was sentenced to probation on each charge. The applicant seeks adjustment of status under the Cuban Adjustment Act of 1966.

As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding to be in error, the AAO will not disturb the determination of inadmissibility under section 212(a)(2)(A)(i)(I), for having been convicted of crimes involving moral turpitude. The applicant seeks a waiver under section 212(h) to overcome inadmissibility. The qualifying relatives for purposes of this waiver are the applicant's U.S. citizen mother and two minor daughters.

Section 212(h) of the Act provides that a waiver of the bar to admission is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

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 of Immigration Appeals 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 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. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *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.*

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., Matter of 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). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998) (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

Counsel, in support of the waiver application, contends that the applicant's two U.S. citizen children are completely dependent on the applicant for financial, emotional, and familial support. *See* Counsel's Brief at 6. He asserts that the applicant is fully involved in his daughters' lives and activities and that he is the primary financial provider in the household. Counsel states that the applicant owns a business, in which the mother of his daughters, [redacted] was involved prior to the birth of the couple's two daughter. He states that after the birth of their younger daughter, [redacted] became a fulltime mother, managing the household. Counsel maintains that [redacted] would be unable to run the business, manage the household, and care for their children upon separation from the applicant. He states that the children's mother has no close relatives in Miami to assist her and indicates in passing that she has a son suffering from epilepsy. *See* Counsel's Brief at 7.

The record contains a brief letter, dated August 19, 2010, from [redacted] who states that the applicant is a very loving father and husband. She confirms that she used to work in the applicant's business until she and the applicant decided that she should stay home with the children. Her letter indicates that the couple had no family upon whom they could rely until approximately seven to eight years earlier, when the applicant's family came. [redacted] asserts that she and the children would not be able to survive without the applicant.

The AAO notes that some emotional hardship is a common result of a bar to admission. The applicant must show that the actual emotional hardship to his children, when combined with other hardship factors, rises to the level of extreme hardship. However, while we acknowledge the important role a father plays in his children's lives, and recognize that separation will have a lifelong impact on the applicant's daughters emotionally, we cannot conclude that the applicant demonstrated that the hardships to his children rise beyond the common results of separation. We note that the record does not indicate that the children or their mother suffer from any mental or physical health concerns that may affect a hardship determination. While counsel briefly indicates that [redacted] son suffers from epilepsy, we observe that the latter makes no reference in her brief letter to having a son, or any child, suffering from epilepsy. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 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). Similarly, although counsel asserts that the children's mother, Ms. [redacted] cannot manage the household and business, while also taking care of the children, she herself makes no such assertion in her letter. While we understand that Ms. [redacted] understandably will not be able to provide the same level of care that she provides her children currently as a fulltime mother, that in and of itself does not raise the hardship to the applicant's children to the level of extreme hardship.

Likewise, although the applicant's children may suffer some financial detriment upon separation from their father, the applicant has not demonstrated the level or the extent of financial hardship they would suffer. For instance, the record also does not address why the applicant could not sell his business before leaving the United States to mitigate any financial losses, or hire a manager to run or assist [redacted] in running the business to provide financially for his family. Moreover, while the record contains Articles of Incorporation and Internal Revenue Service tax transcripts for the applicant's business, the applicant has not proffered any tax returns or transcripts, social security statements, record of financial assets and expenses, or other such records for himself or [redacted] to enable the AAO to assess the financial impact of separation on the qualifying relatives from this record. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)).

Counsel also maintains that the applicant's U.S. citizen mother would suffer extreme hardship. He states that the applicant's mother depends on the applicant for emotional and financial support, and that the applicant is the closest family member she has in Florida. He further states that the applicant

takes his mother to appointments and for grocery shopping, and helps her with tasks she can no longer handle. The record contains a brief letter from the applicant's mother, dated August 2010, in which she states that the applicant is there for her emotionally and for whatever she needs. She indicates that the applicant takes her grocery shopping and to the pharmacy. We observe the record and the applicant's mother's letter contains no information suggesting that the latter is suffering from any health conditions or is otherwise unable to manage the tasks with which the applicant helps. Although counsel contends that the applicant's mother relies upon the applicant for financial support, no such assertion is made by the latter. In fact, we note that the applicant's mother's letter is very brief and provides very little information of hardship.

Having carefully reviewed the evidence of record, the AAO finds that the applicant has not demonstrated that the hardships his U.S. citizen children and mother face upon separation, considered in the aggregate, constitute extreme hardship. While we recognize that the qualifying relatives will undoubtedly suffer hardship as a result of the separation, the applicant has not shown it would constitute "significant hardship over and above the normal disruption of social and community ties" normally associated with deportation or refusal of admission. *Matter of O-J-O-*, 21 I&N Dec. at 385.

Counsel also contends that the applicant's children and mother would also face extreme hardship upon relocation to Cuba and asserts that relocation is impossible. We observe that neither [redacted] nor his mother, make any reference to possible relocation to Cuba. However, in support of his contention that relocation would result in extreme hardship, counsel notes that [redacted] was born in Puerto Rico and has no ties to Cuba, and that she and the couple's children have never been to Cuba. Counsel also asserts that it is unlikely that the applicant or [redacted] would be able to find unemployment in Cuba, while acknowledging that it was unclear what the unemployment rate there is. In addition, he cites the subpar medical facilities in Cuba to treat [redacted] son's epilepsy. Counsel also contends that his mother and children would lose access to the U.S. health system and cites generally to Cuba's repressive communist regime to demonstrate extreme hardship.

We observe once again that counsel's assertions here are not supported by corroborating evidence. The record contains no statement from the applicant, and the statements of [redacted] do not set forth any facts to support counsel's contentions, which are insufficient to meet the applicant's burden of proof without corroboration. *See Matter of Obaigbena*, 19 I&N Dec. at 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506. The AAO does acknowledge that Cuba has a repressive government and that medical facilities there do not meet U.S. standards. *See* Bureau of Consular Affairs, U.S. Dep't of State, *Country Specific Information: Cuba* (Apr. 30, 2012). However, while generally poor conditions in the country of relocation are relevant to a determination of extreme hardship, they do not by itself establish extreme hardship. In this case, the record here does not indicate that the applicant's children or mother would be targeted by the Cuban government for any reason, or that they suffer from any condition requiring medical treatment, such that relocation would result in hardship that is an uncommon result of refusal of admission. In addition, we note that the DOS report indicates that the security situation in Cuba is relatively stable. *See id.*

The AAO recognizes that the relocation may be disadvantageous and cause hardship to the applicant's mother, and particularly to his children, who were born and raised in the United States. However, after careful consideration of the record, we find that the applicant has failed to satisfy his burden to show that the hardship to his qualifying relatives upon relocation rises to the level of extreme hardship.

In this case, the record does not contain sufficient evidence to show that the hardships faced by the qualifying relatives, considered in the aggregate, rise beyond the common results of removal or inadmissibility to the level of extreme hardship. The AAO therefore finds that the applicant has failed to establish extreme hardship to his U.S. citizen children and mother as required under section 212(h) of the Act. He, therefore, remains inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act. Since the applicant failed to establish statutory eligibility for the waiver under section 212(h), the AAO finds that no purpose would be served in considering whether the applicant merits the waiver in the exercise of discretion.

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. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.