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

U.S. Citizenship and Immigration Services

[redacted]

H2

Date: JUL 25 2012 Office: MIAMI, FLORIDA 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 in accordance with the instructions on 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 any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Michael Hemmway

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office 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 under 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 director stated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), and concluded that the applicant had failed to establish that his 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 argues that the Department of Homeland Security (DHS) failed to weigh the submitted evidence in determining hardship to the applicant's qualifying relatives, who are his lawful permanent resident wife and mother, and U.S. citizen children. Furthermore, counsel asserts that DHS abused its discretion by ignoring the submitted evidence and failing to mention the asserted hardship the qualifying relatives would face in Cuba. Counsel argues that the field office director erred in concluding there would be no hardship since, at this time, there are no removals to Cuba. Furthermore, counsel argues in the letter dated January 11, 2012 that DHS failed to consider that denial of the waiver application makes the applicant financially dependent on his family members because he cannot work legally in the United States or obtain a driver license. Counsel argues that at any time the applicant could be removed to Cuba, where he would be persecuted, and that the district adjudication officer failed to examine the submitted country report on Cuba. Counsel asserts that the applicant's health has deteriorated since the denial of the waiver application.

The AAO will first address the finding of inadmissibility. 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 –
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> (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 applicant's record of conviction reflects that on November 2, 2001 the applicant pled nolo contendere to aggravated stalking (prior injunction/restraint) in violation of section 784.048(4) of the Florida Statues. The judge withheld adjudication of guilty and placed the applicant on probation.

The director found the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of a crime involving moral turpitude. As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the director.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is under section 212(h) of the Act. That section provides, in pertinent part:

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

A section 212(h) waiver of the bar to admission resulting from violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Moralez,* 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 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*, 138 F.3d at 1293 (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.

In rendering this decision, the AAO will consider all of the evidence in the record.

The applicant's wife stated in the declaration dated April 12, 2010 that she and the applicant have three U.S. citizen children and three U.S. citizen grandchildren. She indicated that they are a very close family, and her husband's aggravated stalking conviction happened during a brief period when they had marital problems. The applicant's wife asserted that her husband has never hurt her, and they are happily married and living together, and have been married for over 31 years. The applicant's wife contended that she will not follow her husband to Cuba because of its deplorable country conditions. She asserted that they fled from Cuba 30 years ago to live a life of freedom in the United States. She stated that her parents, grandchildren and children, who are now adults, require her to stay in the United States.

In sum, the asserted hardships of remaining in the United States without the applicant are financial and emotional in nature. The applicant's spouse describes having a close relationship with her husband, and as overcoming marital problems in their relationship. The submitted criminal records reflect the applicant was arrested for simple assault on April 14, 2001 for making threats to kill his wife, and for simple battery and stalking. They indicate the applicant and his wife had separated and his wife believed the applicant would kill her. The following month, on May 29, 2001, the applicant was arrested for aggravated stalking and violation of a stay away order for going to his wife's place of employment and threatening her. It is clear the applicant and his wife had serious marital problems and we cannot determine from the evidence in the record how long the stay away order was in effect or how long the applicant and his wife were separated. The submitted medical records convey the applicant has health problems such as hypertension, type II diabetes mellitus, and hyperlipidemia. In regard to the applicant's mother, [redacted] stated in the letter dated May 8, 2009 that the applicant's mother has significant health problems: heart disease, arterial

hypertension, degenerative joint disease, depression and anxiety, and status post coronary angioplasty. There is a claim of financial hardship in having to support the applicant. However, no evidence such as wage statements, income tax records, and invoices of household expenses was submitted to show that the applicant's family members would not be able to financially support the applicant. Consequently, when the asserted hardships are considered collectively, we find they are the common or typical results of removal and inadmissibility, and therefore, fail to establish extreme hardship to the applicant's wife, children, and mother if they remain in the United States without the applicant.

The asserted hardships in relocating to Cuba are separating from family members in the United States, enduring deplorable conditions and lack of freedom in Cuba, and returning to the country where they fled 30 years ago. We acknowledge that the family members who join the applicant to live in Cuba will endure the hardship of separating from the family members who remain in the United States. The applicant's wife stated that Cuba has deplorable condition and lacks freedom, and the applicant submitted a U.S. Department of State Country Reports on Human Rights Practices – 2008 for Cuba, which described general human rights conditions in Cuba. However, neither the applicant nor his wife has described the specific hardships that his wife or other qualifying relatives would experience in joining the applicant to live in Cuba. Thus, when the asserted hardships are considered together, they do not take the case beyond those hardships ordinarily associated with removal.

Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed and the waiver application will be denied.

ORDER: The appeal is dismissed.