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]

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Date: OCT 2 4 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 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,

Perry Rhew
Chief, Administrative Appeals Office

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

The applicant is a citizen of Cuba who was found to be inadmissible to the United States 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 applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director 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 asserts that the director erred and abused her discretion in determining that the applicant failed to established eligibility for a section 212(h) waiver. Counsel argues that the applicant demonstrated through evidence that his removal would cause extreme hardship to his lawful permanent resident father, and that the director concentrated on the applicant's arrest and conviction rather than evaluate the submitted evidence of hardship.

Counsel stated that a brief will be submitted within 30 days. As of this date, the record contains no brief. We will consider the record as constituted.

The AAO will first address the finding of inadmissibility. Section 212(a)(2) of the Act states that:

> (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 . . . 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....
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> 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 reflects that on December 9, 2005, the applicant was found guilty of racketeering/ conspiracy in violation of section 895.03(4) of the Florida Statutes. The judge sentenced the applicant to serve 120 days in prison and placed the applicant on probation for four years.

As the applicant has not disputed on appeal that his offense is a crime involving moral turpitude, 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 found 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, who in the instant case is the applicant's lawful permanent resident father. 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

Counsel contends that the applicant's immediate family members live in the United States, and that the applicant has lived here since September 2003. Counsel, citing cases in which the federal courts have found extreme hardship from family separation, asserts that the applicant's 48-year-old father will be devastated if the applicant were barred admission to the United States. Counsel argues that if the applicant returned to Cuba, the applicant will not have any financial assistance while trying to obtain a job and any money the applicant should bring to Cuba will be quickly depleted. Counsel asserts that Cuba is governed by a totalitarian government having one of the worst human rights records, and when the applicant returns to Cuba, the applicant will most likely be persecuted for having sought refuge in the United States. Counsel argues that the applicant will likely not find a job in Cuba because the government controls jobs, the applicant has lived in the United States, and due to the general social and economic conditions in Cuba. Thus, counsel contends that the applicant and his family will become destitute in Cuba. Counsel cited decisions in which the Board

held that economic hardship alone is not sufficient for finding hardship, and also cites *Carrette-Michel v. INS*, 749 F.2d 490 (8th Cir. 1984), in which the Court found extreme hardship in circumstances where there is complete inability to find work. Counsel argues that since the applicant's immediate family members will be emotionally devastated if the applicant were deported to Cuba the instant case presents more than loss of economic opportunities. Counsel contends that the applicant is able to provide a decent living for his family members in the United States, and that the applicant has no other avenue to adjust status because his immediate family members do not qualify to file a petition on his behalf.

As to the submitted evidence, the Biographic Information (Form G-325) dated September 21, 2009 reflects that the applicant is not married, that his mother lives in Cuba, and that the applicant held jobs as an assistant manager at juice bar, a carpenter, and a driver. The employment letter dated September 21, 2009 stated that the applicant earned $300 each week as an assistant manager. The applicant submitted a copy of his father's lawful permanent resident card.

The asserted hardships in the instant case are financial and emotional in nature. We acknowledge the applicant's father will experience emotional hardship in being separated from his 29-year-old son, and in having his son return to Cuba, the country from which they fled. Counsel's assertion that the applicant's father is financially dependent on the applicant has not been established by the submitted financial records. It is incumbent upon the applicant to substantiate claims of hardship. As to the emotional hardship to the applicant's father in having the applicant return to Cuba, counsel argues that the applicant will be persecuted in Cuba and will not be able to obtain a job due to the applicant's parole status and the social and economic conditions in Cuba. However, the applicant has not submitted any evidence consistent with counsel's argument, and the Form G-325 reflects that as of September 2009, the applicant's mother lived in Cuba, which suggests that the applicant has social and familial contacts to assist in relocation. Thus there is no evidence in the record in accord with the contention that the applicant will be destitute in Cuba and confront a complete inability to find work. When the asserted hardship factors are considered together, they fail to demonstrate that the hardship the applicant's father will experience in remaining in the United States, while his son lives in Cuba, is extreme.

The asserted hardships to the applicant's father in relocating to Cuba with the applicant are: not being able to obtain a job, enduring Cuba's totalitarian government, and being at risk for having sought refuge in the United States. The documentation in the record is not in accordance with the asserted risk of persecution. In the record of sworn statement dated August 15, 2003, the applicant stated that neither the applicant nor any member of his family were mistreated or threatened by authorities in Cuba; or accused, arrested, or detained while there. The Form G-325 dated August 23, 2004 reflects that the applicant came to the United States after completing his high school education in Cuba. Furthermore, the applicant has not presented any documentation on appeal which is in agreement with the claim that the applicant and his father will be at risk of persecution upon return to Cuba. As previously stated, the burden is upon the applicant to substantiate claims of hardship. As to obtaining a job in Cuba, we have already discussed the likelihood that the applicant will be able to obtain a job in Cuba in view of his mother's social and familial connections in Cuba, and the record does not suggest that the applicant's father has a serious health condition which will affect his ability to find a job in Cuba. Thus, when the asserted hardship factors are considered together, they do not establish extreme hardship to the applicant's father if he relocated to Cuba with the applicant.

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 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.