



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JAN 02 2013** Office: MIAMI, FLORIDA

FILE: [REDACTED]

IN RE: Applicant: [REDACTED]

APPLICATION: 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 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,

Ron Rosenberg
Acting 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 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 is the spouse and stepfather of U.S. citizens. He seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in conjunction with an adjustment of status application, in order to obtain admission to the United States as a lawful permanent resident.

The Field Office Director concluded that the applicant had failed to establish that the bar to his admission would result in extreme hardship to the qualifying relatives, as required under section 212(h)(1)(B) of the Act, and denied the Form I-601 accordingly. *Field Office Director's Decision*, dated April 27, 2010. The director alternatively found that the applicant had not demonstrated rehabilitation, and thus, did not show that that he merits the waiver in the exercise of discretion.

On appeal, counsel raises a new argument that the applicant's waiver application should have been considered under section 212(h)(1)(A) of the Act, as the activities that rendered him inadmissible occurred over fifteen years ago. Alternatively, counsel asserts that the applicant's qualifying relatives would suffer extreme hardship if the applicant's admission to the United States is barred. *Form I-290B, Notice of Appeal or Motion*, dated April 27, 2010.

The record of evidence includes, but is not limited to, counsel's briefs; the applicant's U.S. citizen wife's statement; statements of the applicant's U.S. citizen stepsons; a character reference letter from the applicant's niece; 2009 wage and tax statement for the applicant's wife; the applicant's and his wife's bills and expenses; and the applicant's criminal records. The entire record was reviewed and all relevant evidence considered in reaching a 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.

The record reflects that the applicant was paroled into the United States on or about September 9, 1980 pursuant to section 212(d)(5) of the Act when he was approximately twelve years old. On July 9, 1985, the applicant was arrested and charged with five counts of sexual battery. On March 6, 1986, he was convicted of two counts of lewd and lascivious act upon or in presence of a child in violation of section 800.04 of the Florida Statute (F.L.), a felony in the second degree, under case number [REDACTED]. The conviction record indicates that the applicant was sentenced as an adult. The criminal court found probation an unsuitable dispositional alternative to imprisonment and that the seriousness of the offense and other aggravating factors dictated that community-based sanctions should be imposed, requiring intensive supervision and surveillance. Accordingly, the court ordered that the imposition of sentence be withheld and that the applicant be placed in a

Community Control program for a two year period on each count to run concurrently.

The applicant was also arrested on August 15, 1993 of aggravated child abuse in violation of F.L. § 827.03. Criminal enforcement records indicate that the charges were reduced to, and the applicant pled nolo contendere to, cruelty toward a child-child abuse injury, a first degree misdemeanor. The conviction record proffered by the applicant also indicates that the original charge was reduced and the matter disposed, but fails to set forth the criminal offense for which the applicant was convicted. The record also shows that the applicant was charged on September 26, 1994 with unemployment fraud in violation of F.L. § 443.071(1), a third degree felony. He pled guilty to the charge and was ordered to pay restitution in the amount of \$1,099 on September 26, 2001.

As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be in error, we will not disturb the determination that the applicant is inadmissible 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.

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

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 –

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

Pursuant to section 212(h)(1)(A) of the Act, the ground of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act may be waived in the exercise of discretion, if the applicant demonstrates that the activities for which he is inadmissible occurred more than 15 years before the date of his application for a visa, admission, or adjustment of status. In addition, the applicant must demonstrate that his admission to the United States is not contrary to the national welfare, safety, or security of the United States, and that he has been rehabilitated in order to qualify for a waiver under this provision.

The record indicates that the criminal activities leading to the applicant's conviction for unemployment fraud in 2001 occurred in 1992. The August 1993 arrest and subsequent conviction relating to child abuse stemmed from offenses committed that same year. As such, the record shows that the applicant's criminal activities for which he has been found inadmissible occurred over fifteen years ago. He, therefore, is now prima facie eligible to seek a waiver under section 212(h)(1)(A) of the Act to overcome the grounds of inadmissibility arising from that conviction.

However, the AAO finds that the applicant has not demonstrated that he has been rehabilitated as required under section 212(h)(1)(A). We note that the record contains no statements from the applicant, expressing any remorse for his significant past criminal conduct. The applicant's wife's statement in the record is equally silent about the applicant's criminal conduct, her knowledge about such conduct, and any facts to demonstrate the applicant's rehabilitation. And while the record does not show any additional criminal convictions subsequent to the applicant's 2001 unemployment fraud conviction, it does indicate that the applicant was arrested approximately three more times after his arrest in 1994 for that offense. Although it does not appear that these arrests and charges resulted in additional convictions, they also do not support a finding of rehabilitation, particularly as the record is otherwise lacking evidence that affirmatively demonstrates the applicant's rehabilitation or remorse. Accordingly, we do not find that the applicant has met his burden to demonstrate that he has been rehabilitated for purposes of a section 212(h)(1)(A) waiver.

We now turn to the applicant's secondary argument on appeal that the applicant qualifies for a discretionary waiver under section 212(h)(1)(B) of the Act, on the basis that the bar to admission would cause extreme hardship to his qualifying relatives, his U.S. citizen wife and two stepchildren. Section 212(h)(1)(B) 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 (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 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.

On appeal, counsel for the applicant contends that the applicant's wife would suffer extreme hardship upon separation from the applicant. The applicant's wife, in her statement, asserts that she would face extreme emotional hardship if separated from her husband. The record shows that the applicant and his wife have been in a relationship for approximately seventeen years and married nine years. The applicant's wife states that the applicant is her best friend and that she cannot imagine her life without him. She also states that the applicant has become a father to her two sons from a prior relationship. Counsel, on brief, also mentions in passing that one of the applicant's stepson's take Aderol and submitted what appears to be unfilled prescription for [REDACTED] as corroboration. We note, however, that neither the applicant's wife, nor the letter by [REDACTED] the applicant's stepson, makes any reference to any health issues and medications that the applicant's stepchildren may have. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. *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).

The AAO recognizes that the applicant's wife will suffer emotional distress should the applicant be barred from admission into the United States. However, the applicant has not shown that the emotional hardships to his wife rise beyond the normal hardships accompanying separation from a family member, even when considered in the aggregate. Additionally, we note that the applicant's wife is not without emotional and psychological support and strong family ties in the United States. She has resided in the United States since approximately the age of one and has her entire family residing in the United States, including her two sons, who are about 20 and 18 years old respectively.

The applicant's wife also contends that she would endure extreme economic hardship upon separation from the applicant. She asserts that she and the applicant's incomes are approximately the same, but that both their incomes are necessary in order to pay their expenses, which are approximately \$3,300 per month. The applicant's wife has submitted copies of her 2009 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement, her paystubs, and various bills and expenses. She asserts that she would not be able to support herself and her sons without the applicant's financial assistance. She also states that the applicant would not be able to earn nearly as much in Cuba to support his family as he is able to do in the United States. Also in the record are family court printouts, which counsel contends shows that the applicant's wife is not receiving child support from her sons' father. We note, however, that both of the applicant's stepsons are now over the age of eighteen.

While we understand that the applicant's wife may very well face some financial difficulties as a result of separation, we do not find that the record demonstrates financial hardship. Although counsel and the applicant's wife maintain that the latter cannot support herself and her sons without the applicant's financial support, we observe that the record contains no evidence of the applicant's income and financial contribution to the family. This includes records such as IRS Form W-2 statements, IRS tax returns or transcripts, and social security earnings statements for the applicant that would enable the AAO to meaningfully assess the financial impact of the loss of the applicant's income on his wife. 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)).

Having considered the evidence of record, the AAO finds that it does not demonstrate that the applicant's wife would experience extreme hardship as a result of separation from the applicant. The applicant has not shown the hardship his wife would suffer constitutes "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 wife would suffer extreme hardship upon relocation to Cuba. The applicant's wife states that although she was born in Cuba, she has resided in the United States her entire life and is more American than Cuban. She states that her mother is now deceased, but that her father, a lawful permanent resident, resides in the United States. In addition, she notes that her sons were born in the United States and that they would have difficulty adjusting to life in Cuba. The record contains brief letters from the applicant's wife's two sons and a reference letter from the applicant's niece, [REDACTED]. We note, however, that both of the applicant's sons are now over eighteen years old, and their letters do not reflect any intention of relocation on their part or set forth the hardships they or their mother would face upon any relocation to Cuba. We also note

that the record contains no letters from the applicant's wife's father and other relatives in the United States to demonstrate her other close ties in the United States. The applicant's wife also contends that she and the applicant do not have any *close* family in Cuba. We note, however, that she does not assert that she and her husband have *no* family there. The applicant's wife, a native of Cuba, also does not suggest that she does not understand the culture and language of Cuba. Moreover, we observe that the applicant's wife asserts in her statement that she would *not* be willing to go to Cuba and leave her family in the United States.

Having carefully reviewed the evidence of record, the AAO does not find that it demonstrates that the applicant's wife would suffer extreme hardship as a result of relocation to Cuba. We acknowledge that separation from family and the usual hardships arising from relocation will be distressful to the applicant's wife. However, the applicant has failed to show that the hardships the applicant's wife upon relocation, even when considered in the aggregate, rise beyond the normal results of a bar to admission.

Although counsel indicates, on brief, that the applicant's stepsons are also qualifying relatives who would suffer extreme hardship if uprooted from their lives in the United States, we note that neither the brief, nor the applicant's wife's and stepsons' statements, specifically address the hardships to the applicant's stepsons upon separation or relocation. Regardless, we review the evidence of record in its entirety as to this claim. However, having done so, the AAO finds that the evidence of record is insufficient to satisfy the applicant's his burden to demonstrate extreme hardship to his stepsons upon relocation or separation from the applicant.

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 qualifying relatives as required under section 212(h)(1)(B) of the Act, and that he has also failed to demonstrate that he has been rehabilitated for purposes of a waiver under section 212(h)(1)(A) 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 waivers, the AAO finds that no purpose would be served in considering whether he merits a 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.