



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

Date: **JAN 29 2013**

Office: TAMPA, 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,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Tampa, 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 crimes 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). The director denied the Application for Waiver of Grounds of Inadmissibility (Form I-601), concluding that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative and that a favorable exercise of discretion was warranted.

On appeal, counsel asserts that the director wrongfully determined that the applicant does not reside with his qualifying relative child and the mother of his child. Counsel contends that the applicant resides with his partner and child at [REDACTED] but uses the address [REDACTED] strictly for mail. Counsel declares that the applicant lives below poverty guidelines, but his partner and child are financially dependent upon him. Counsel asserts that the applicant's son's poor academic performance is from emotional distress about his father's immigration dilemma.

Counsel argues that in Cuba the applicant's son would lack access to specialized educational programs that would treat his attention deficiency/hyperactivity and conduct problems, and would not have access to the medications he requires for asthma and allergies. Counsel declares that it would be difficult for the applicant's son to live in Cuba, as it is underdeveloped and is dangerous due to the political environment. Citing the U.S. Department of State Country Reports on Human Rights Practices – 2010 for Cuba, counsel contends that human rights are a concern in Cuba. Counsel declares that the minimum monthly wage of \$10 in Cuba would not be enough to support the applicant's family members.

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-
 - (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

The Board 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....

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.)

On December 19, 2002, the applicant was arrested for grand theft of a vehicle in violation of section 812.014 of the Penal Code of Florida; attempted arson in violation of section 806.01 of the Penal Code of Florida; and criminal mischief in violation of section 806.13 of the Penal Code of Florida. On July 14, 2003, the applicant pleaded *nolo contendere* to the charges. The judge withheld adjudication of guilt and placed the applicant on probation.

The director determined that the applicant's convictions were crimes 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 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 -

(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. The qualifying relative in this case is the applicant's lawful permanent resident son. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 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*, 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.

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

The applicant and the mother of his child provided affidavits describing hardship to the applicant's son if the waiver is denied. The applicant claimed in his affidavit dated January 18, 2011 that for

approximately three years he has lived with his child and his child's mother at [REDACTED] while his mail has been directed to [REDACTED]. He stated that his cousin lives at the mailing address, and his use of the address is "because it is a convenient and stable address to receive my mail." The applicant contends that his income is low, but is needed to support his child, as the mother of his child earns very little as a house cleaner. The applicant asserts that his child is having academic problems, and is concerned about their possible separation. The mother of the applicant's child gave testimony in the affidavit dated February 2, 2011 consistent with statements by the applicant about his residence, mailing address, and financial support. She contended that she and her son would be forced to relocate with the applicant to Cuba, where he would not have the education services he requires, because she would not have the resources to support them in the United States.

The claimed hardships to the applicant's son if he remained in the United States without his father are emotional and financial in nature. The assertion that the applicant's 12-year-old son, who was born on September 25, 2000, has academic problems is concordant with the Department of Exceptional Student Education Eligibility Staffing Report dated November 12, 2009, stating he has learning disabilities, struggles academically, and requires an individual education plan. However, the assertions made that the applicant lives with his son conflicts with the information provided by the applicant in the Biographic Information (Form G-325) dated March 23, 2010. This form asks for the location of the applicant's residence for a five-year period. In response, the applicant indicated that from March 2009 to the date on which he signed the Form G-325, he resided at [REDACTED] and from March 2008 to March 2009, he resided at [REDACTED]; and from June 2007 to March 2008 his residence was at [REDACTED]. Submitted income tax records for 2007, 2008, and 2009 show the applicant used the [REDACTED] address, and that his son was not listed as a dependent. These tax returns show the applicant's income was not enough to support the applicant or his son for his income was \$259 in 2007, \$2,210 in 2008, and \$2,359 in 2009. The applicant has not provided any evidence consistent with the claim that his son lives below the poverty level and requires his financial support, or of the actual source of his son's livelihood. Lastly, there is no evidence in the record in support of the claim that the applicant's son's scholastic problems stem from anxiety about separation from the applicant. In conclusion, when the asserted hardship factors are considered collectively, they fail to establish the applicant's son will experience extreme hardship if he remains in the United States while his father lives in Cuba.

The asserted hardships to the applicant's son in relocating to Cuba are not having a specialized educational program, not having medicine for asthma and allergies, and living in poverty in an underdeveloped country with a poor human rights record. While we acknowledge the U.S. Department of State report conveys that the government in Cuba has a poor human rights record, the applicant has not demonstrated that his son's personal safety will be at risk in Cuba or his living standard in Cuba will be significantly diminished in relation to what he now has in the United States. Furthermore, the applicant has not provided any evidence in accord with the assertion that his son will not receive specialized care for his learning disabilities and requires medication for asthma and allergies. The educational evaluation of the applicant's son noted he is a bilingual student. Thus, when the asserted hardship factors are considered together, they fail to demonstrate that the hardship to the applicant's son in relocating to Cuba will be extreme.

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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. The applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.