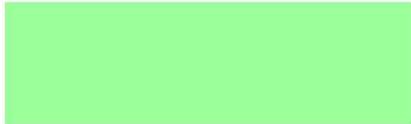


(b)(6)

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



U.S. Citizenship  
and Immigration  
Services



DATE: OCT 23 2013

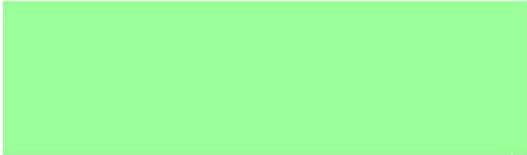
OFFICE: HIALEAH

File: 

IN RE: Applicant: 

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:



INSTRUCTIONS:

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

  
f

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Field Office Director, Hialeah, Florida, denied the waiver application and the matter 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 applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her U.S. citizen children, born in 1981 and 1982.

The field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative. The field office director further noted that even if extreme hardship had been found, the applicant did not merit a waiver of discretion based on the applicant's pattern of disregard for the law. The Form I-601, Application for Waiver of Grounds of Inadmissibility, was denied accordingly. *See Decision of the Field Office Director*, dated April 13, 2013.

In support of the appeal, counsel for the applicant submits the following: a letter from counsel, a letter from [REDACTED] and a letter from the applicant's daughter, [REDACTED]. 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.

(ii) Exception.—Clause (i)(I) shall not apply to an alien who committed only one crime if-

(I) the crime was committed when the alien was under 18 years of age, and the crime was committed (and the alien was released from any confinement to a prison or correctional institution imposed for the crime) more than 5 years before the date of the application for a visa or other documentation and the date of application for admission to the United States, or

(II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such

crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

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

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana . . . .

(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 . . . ; and

(2) the Attorney General [Secretary], in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

The record establishes that on August 13, 2001, the applicant was convicted of grand theft in [REDACTED] County, Florida, and on April 23, 1999, the applicant was convicted of grand theft in the second degree in [REDACTED] County. In 1981, the applicant was convicted of Petit Larceny in [REDACTED] County, Florida. The applicant is inadmissible under section 212(a)(A)(i)(I) of the Act, for having been convicted of multiple crimes of moral turpitude. Based on the applicant's above-referenced convictions, the field office director determined that the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act of the Act, for having been convicted of

crimes involving moral turpitude. On appeal, the applicant does not contest this finding of inadmissibility. The AAO will not disturb that determination on appeal. The applicant requires a waiver under section 212(h) of the Act.

To begin, the AAO notes that on appeal counsel requests an “interview for the adjudication of the I-601 Waiver based on 212(h) and the Petty offense exemption for the Petit Larceny.....” See *Brief in Support of Appeal*, dated May 12, 2013. Counsel does not provide any analysis as to how the petty offense exception would apply to the applicant. Pursuant to Section 212(a)(2)(A)(ii)(II), the petty offense exception applies to individuals who have been convicted of only one crime. In this instance, the applicant has three convictions for crimes involving moral turpitude, and the applicant is statutorily ineligible for the petty offense exception.

A waiver of inadmissibility under section 212(h) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse, parent, son or daughter of the applicant. The applicant’s U.S. citizen children are the only qualifying relatives in this case. Hardship to the applicant or Mr. [REDACTED] can be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and USCIS then assesses whether a favorable exercise of discretion is warranted. See *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (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.

The applicant’s U.S. citizen children declare that they will experience hardship were they to remain in the United States while their mother relocates abroad as result of her inadmissibility. In a declaration, the applicant’s son states that he depends on his mother for emotional and mental support, and long-term separation from her would cause him hardship. He further explains that his mother babysits for his three children 12 hours a day, and he needs her continued support. Further, the applicant’s son details that his mother would be in danger if she returns to Cuba, as she may be incarcerated for many years, and this would cause him hardship as well. Finally, the applicant’s son asserts that his children are very attached to the applicant and would experience hardship if they were separated from their grandmother. See *Affidavit from Pedro Luis Machado*, dated March 14, 2012. The applicant’s daughter echoes her brother’s sentiments with respect to the hardships she would experience were her mother to relocate abroad. She notes that she currently lives with her mother and relies on her for emotional support, and long-term separation would cause her hardship. *Affidavit of Lisbet Machado*, dated March 17, 2012.

The AAO acknowledges the applicant’s children’s contention that they (and the applicant’s grandchildren) will experience emotional hardship were they to remain in the United State while the applicant relocates abroad, but the record does not establish the severity of the hardship or the

effects on their daily lives. Further, the applicant has not established that her son would be unable to obtain alternate child care were his mother to relocate abroad. The AAO notes that the applicant's son and his wife are gainfully employed, earning over \$68,000 a year. *See Form I-864, Affidavit of Support*, dated June 11, 2012. Finally, there is no documentation on the record indicating that the applicant specifically would be in danger were she to return to Cuba. 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)). It has thus not been established that the applicant's children, in their early 30s, would experience extreme hardship were they to remain in the United States while the applicant relocates abroad as a result of her inadmissibility.

In regards to relocating abroad to reside with the applicant, this criterion has not been addressed. No documentation has been provided outlining the specific hardships, if any, the applicant's qualifying relatives would experience were they to relocate to Cuba. As noted above, the only hardship referenced with respect to residing in Cuba is at it relates to the applicant, not her children, the only qualifying relatives in this case. As such, it has not been established that the applicant's children would experience extreme hardship were they to relocate abroad to reside with the applicant due to her inadmissibility.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that the applicant's U.S. citizen children will face extreme hardship if the applicant is unable to reside in the United States. Rather, the record demonstrates that they will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a parent is removed from the United States and/or refused admission. Although the AAO is not insensitive to the applicant's children's situation, the record does not establish that the hardships they would face rises to the level of "extreme" as contemplated by statute and case law.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.