



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF J-M-M-

DATE: APR. 15, 2016

APPEAL OF HIALEAH, FLORIDA FIELD OFFICE DECISION

PETITION: FORM I-601, APPLICATION FOR WAIVER OF GROUNDS OF
INADMISSIBILITY

The Applicant, a native and citizen of Cuba, seeks a waiver of the ground of inadmissibility for a crime involving moral turpitude. *See* Immigration and Nationality Act (the Act) section 212(h), 8 U.S.C. § 1182(h). A foreign national seeking to be admitted to the United States as an immigrant or to adjust status to lawful permanent residence must be admissible or receive a waiver of inadmissibility. U.S. Citizenship and Immigration Services (USCIS) may grant this discretionary waiver if refusal of admission would result in extreme hardship to a qualifying relative or qualifying relatives; or, because the activities for which the foreign national is inadmissible occurred 15 years prior, if the foreign national's admission would not be contrary to the national welfare, safety, or security of the United States and the foreign national has been rehabilitated.

The USCIS Field Office Director, Hialeah, Florida, denied the application. The Director concluded that the Applicant was inadmissible for having been convicted of crimes involving moral turpitude. The Director then concluded that the Applicant had not established that he had been rehabilitated. The Director further stated that the adverse factors outweigh the positive factors and denied the waiver as a matter of discretion.

The matter is now before us on appeal. In the appeal, the Applicant submits additional evidence and claims that the Director erred in applying the law.

Upon *de novo* review, we will dismiss the appeal.

I. LAW

The Applicant is seeking to adjust status to lawful permanent resident pursuant to the Cuban Adjustment Act and has been found inadmissible for a crime involving moral turpitude, specifically for an Aggravated Battery conviction. Section 212(a)(2)(A) of the Act, 8 U.S.C. § 1182(a)(2)(A), provides, in pertinent parts:

(i) In General

Except as provided in clause (ii), any 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, or
- (II) a violation of (or a conspiracy or attempt to violate) any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), is inadmissible.

Individuals found inadmissible under section 212(a)(2)(A) of the Act may seek a waiver of inadmissibility under section 212(h). Section 212(h) of the Act provides, in pertinent parts:

The [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . 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 if -

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary of Homeland Security] 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 [Secretary of Homeland Security] 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;

(C) the alien is a VAWA self-petitioner; and

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

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation or proceedings to remove the alien from the United States. . . .

Decades of case law have contributed to the meaning of extreme hardship. The definition of extreme hardship "is not . . . fixed and inflexible, and the elements to establish extreme hardship are dependent upon the facts and circumstances of each case." *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565 (BIA 1999) (citation omitted). Extreme hardship exists "only in cases of great actual and prospective injury." *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (BIA 1984). An applicant must demonstrate that claimed hardship is realistic and foreseeable. *Id.*; see also *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968) (finding that the respondent had not demonstrated extreme hardship where there was "no showing of either present hardship or any hardship . . . in the foreseeable future to the respondent's parents by reason of their alleged physical defects"). The common consequences of removal or refusal of admission, which include "economic detriment . . . [,] loss of current employment, the inability to maintain one's standard of living or to pursue a chosen profession, separation from a family member, [and] cultural readjustment," are insufficient alone to constitute extreme hardship. *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996) (citations omitted); but see *Matter of Kao and Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* 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 the qualifying relatives would relocate). Nevertheless, all "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of Ige*, 20 I&N Dec. 880, 882 (BIA 1994) (citations omitted). Hardship to the Applicant or others can be considered only insofar as it results in hardship to a qualifying relative. *Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 471 (BIA 2002).

II. ANALYSIS

The issue presented on appeal is whether the Applicant demonstrates eligibility for a waiver of inadmissibility pursuant to either section 212(h)(1)(A) or section 212(h)(1)(B) of the Act. The

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Applicant does not contest the finding of inadmissibility for a crime involving moral turpitude, a determination supported by the record.¹ The Applicant asserts that since his aggravated battery offense involving moral turpitude occurred more than 15 years ago, he is eligible for a waiver of inadmissibility under section 212(h)(1)(A) of the Act. He also states that were he to depart or be removed from the United States, his spouse and children and mother would experience exceptional and extremely unusual hardship in his absence. The claimed hardship to the Applicant's spouse, children, and mother from separation consists of loss of income and the emotional hardships of separation. If his spouse and children joined him in Cuba, he claims their hardship from relocation consists of loss of medical care.

The evidence in the record does not establish that the Applicant has been rehabilitated. Nor does the evidence in the record, considered both individually and cumulatively, demonstrate that the Applicant's spouse, children, or mother would experience extreme hardship if the waiver is denied. Because the Applicant has not established rehabilitation or extreme hardship, we will not address whether he merits a waiver as a matter of discretion.

A. Waiver

The last act rendering the Applicant inadmissible under section 212(a)(2)(A) of the Act occurred on [REDACTED] 1999, more than 15 years ago. Consequently, the Applicant may demonstrate eligibility for a waiver of inadmissibility pursuant to either section 212(h)(1)(A) or section 212(h)(1)(B) of the Act. To meet the requirements of section 212(h)(1)(A) of the Act, the Applicant must show that 1) admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and 2) the Applicant has been rehabilitated.

The record demonstrates that the Applicant is married and has two children. It further shows that the Applicant has been gainfully employed from 2007 to 2011, that he paid taxes from 2007 to 2011, and purchased a home. The record also contains letters of support from the Applicant's relatives and friends. In his statement, the Applicant expresses remorse for his mistakes and maintains that for the past 15 years he has had a clean record. He asserts that the Director incorrectly labeled his spouse's request for an injunction, a request she withdrew five days later, as a domestic violence case. In her statement, the Applicant's spouse briefly states that in 2006 they had marital problems and needed to be apart. She further stated that the Applicant refused to leave their home so she obtained an

¹ As stated above, the Applicant has been found inadmissible under section 212(a)(2)(A) of the Act for a crime involving moral turpitude. Specifically, in our October 01, 2013 decision in connection with a prior Form I-601 from the Applicant, we concluded that the Applicant's conviction on [REDACTED] 1999, under Florida Statutes (Fla. Stat.) § 784.045 for Aggravated Battery, was for a crime involving moral turpitude. The Applicant was also convicted under § 810.02(2)(a) of Burglary with Assault/ Battery, a first degree felony; and under Fla. Statutes § 914.22(1) of Tampering with a Witness, Victim or Informant, a third degree felony. We did not determine whether these convictions involve moral turpitude because we concluded that Aggravated Battery is a crime involving moral turpitude and only one of the Applicant's convictions needed to qualify as a crime involving moral turpitude to find the Applicant inadmissible.

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injunction against him but had it dismissed a week later. She states that the Applicant is not violent but does not explain the incident that prompted her to seek an injunction against the Applicant in any detail. Furthermore, while the Applicant submitted evidence of the injunction's dismissal, he did not submit his spouse's petition to the court for injunctive relief. In the absence of this evidence we cannot determine the reasons stated in her petition for the injunction.² As the Applicant's crime involving moral turpitude was for Aggravated Battery, and we cannot determine from the record why his spouse obtained an injunction against him, the Applicant has not demonstrated his rehabilitation as required under section 212(h)(1)(A) of the Act.

The Applicant must therefore demonstrate that denial of the application would result in extreme hardship to a qualifying relative or relatives.³ In this case, the qualifying relatives are the Applicant's spouse, children, and mother. In support of his claim of hardship to his spouse, children, and mother, the Applicant submitted the following evidence. With the Form I-601 the Applicant submitted statements from himself and his spouse and letters of support from relatives and friends. The Applicant also submitted copies of his criminal record, his mother's medical records, mortgage documentation, psychological evaluations of his children, a neuropsychological evaluation of his spouse, school records, tax and financial records, marriage and birth certificates, and immigration documents. On appeal, the Applicant submitted country information for Cuba, school documentation, a psycho-educational evaluation of his son, and resubmits copies of previously submitted documentation.

The Applicant claims that if his spouse and children remain in the United States without him, they will suffer emotional and financial hardship. As to the financial hardship, the Applicant's spouse asserts that she and their children, born in [REDACTED] and [REDACTED] depend on the Applicant emotionally and financially. She states that the Applicant works as a truck driver and is their family's only breadwinner. She declares that when the Applicant was not able to work due to his immigration situation, their home went into foreclosure. Income tax records from 2007 to 2011 establish that the Applicant is a self-employed truck driver. Other than evidence of a mortgage modification in 2013 and a 2012 bank statement, the record contains no documentation that would demonstrate the Applicant's family's current financial situation. There is no documentation in the record to suggest that his spouse would be unable to obtain gainful employment to financially support herself and her children in the United States in his absence. The Applicant's son indicates that he spends weekends with his grandparents. There is nothing in the record to suggest the family's relatives are unwilling or unable to help with the care of the children while their mother is at work.

As to emotional hardship, the Applicant and his spouse state that their children worry about his impending deportation. The Applicant's spouse asserts that the Applicant is a devoted father and she

² An injunction provides protection from abuse by a family member. A petitioner must be a victim or believe that she is in imminent danger of becoming a victim of abuse. *See* Fla. Stat. § 741.30.

³ We need not now determine whether the Applicant's convictions for Burglary with Assault/Battery and Aggravated Battery are violent or dangerous crimes under 8 C.F.R. § 212.7(d) as the Applicant must first establish eligibility for a waiver of inadmissibility by showing extreme hardship to a qualifying relative or relatives.

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is depressed, cannot concentrate, and has anxiety about the effect that long-term separation from the Applicant will have on their children. The record contains a neuropsychological evaluation of the Applicant's spouse from a licensed psychologist which states that the Applicant is the family's primary provider and his spouse has insomnia, depression, and anxiety about the potential financial consequences to their household from her spouse's deportation and the hardship to their children from separation. The licensed psychologist recommended that she seek psychiatric treatment for depression and anxiety, antidepressants, and outpatient psychological counseling. We acknowledge that the Applicant and his spouse have a close relationship and separation would result in emotional hardship. We further acknowledge the evidence of the psychological evaluation. However, as we stated above, the Applicant has not established that his spouse would be unable to obtain gainful employment to support their household in his absence. Nor does the record suggest that relatives would be unable or unwilling to assist with the care of his children.

Regarding the emotional hardship to their children, the Applicant claims that his son is anxious and depressed and had stated that he cannot live without the Applicant. The record contains a psycho-educational report from their son's school psychologist, which states that he takes medicine for Attention Deficit Hyperactivity Disorder (ADHD) and struggles academically. This report primarily describes the academic struggles of the Applicant's son and does not indicate how the Applicant's inadmissibility or presence in the United States would impact his son. Furthermore, the claim that his son is anxious and depressed and cannot live without the Applicant is from counsel's brief. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant's burden of proof. The unsupported assertions of counsel do not constitute evidence. *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 record also contains a psychological evaluation of the Applicant's daughter, which states that she has below average intelligence. This evaluation does not describe how the Applicant's inadmissibility or presence in the United States would affect his daughter.

As to the emotional hardships of the Applicant's mother, the Applicant maintains that his mother's medical condition is critical as she has diabetes, anxiety, hypertension, and depression and that she needs his financial and emotional support. His spouse asserts that the possibility of the Applicant's deportation aggravates her mother-in-law's medical conditions. The Applicant submitted medical records establishing that his mother is [redacted] years old and has hypertension, anxiety, gastritis, diabetes, and mild brain atrophy. Although the Applicant asserts that his mother needs his financial and emotional support, he does not describe the assistance he provides his mother in any detail. Nor does he provide evidence of his financial assistance. Further, the record shows that the Applicant has siblings in the United States and he does not indicate that they would be unwilling or unable to assist their mother.

While we acknowledge the Applicant's spouse, children, and mother will experience emotional hardship were he to relocate abroad, the record does not establish the severity of this hardship or the effects on their daily life. As we stated above, the Applicant has not established that his spouse would be unable to obtain gainful employment to support herself and her children in his absence. He

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has not shown that his mother needs his support emotionally or financially. Nor has he demonstrated the severity of hardship or its effects on his children. Thus, while the record reflects that the Applicant's spouse, children, and mother would experience hardship in the Applicant's absence, it does not show that the hardship demonstrated, considered individually and cumulatively, rises to the level of extreme hardship.

As to the hardships of relocation to Cuba, the Applicant provides U.S. Department of State reports on Cuba which state that the government used excessive force to quell peaceful protests in Cuba and that the United States provides humanitarian support to political prisoners and other groups in Cuba but the Applicant does not specify why he or his family would be mistreated in Cuba. The U.S. Department of State also states that remittances from the United States play a significant role in Cuba's economy but the Applicant does not describe hardship to his spouse, children, or mother if they were to relocate to Cuba in any detail. The Applicant asserts that his son would not be able to obtain medicine for ADHD in Cuba, but the record contains no evidence to support this assertion. "[G]oing on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings." *In re Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). When considered individually and cumulatively, the hardship upon relocation is not extreme.

III. CONCLUSION

The Applicant has the burden of proving eligibility for a waiver of inadmissibility. See section 291 of the Act, 8 U.S.C. § 1361. The Applicant has not met that burden. Accordingly, we dismiss the appeal.

ORDER: The appeal is dismissed.

Cite as *Matter of J-M-M-*, ID# 16139 (AAO Apr. 15, 2016)