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U.S. Citizenship
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Services

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[REDACTED]

FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER

Date: OCT 31 2008

IN RE: [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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center, 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 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 his U.S. citizen spouse and sons.

The record reflects that the applicant was paroled into the United States on June 2, 1980. The applicant and his spouse were married in the United States on June 11, 2000. The applicant has two sons from a previous marriage, [REDACTED], born on March 5, 1985, and [REDACTED], born on January 26, 1989. On February 23, 2004, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) under the terms of the Cuban Adjustment Act and an Application for Waiver of Grounds of Inadmissibility (Form I-601).

The director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of Director Denying Form I-601*, dated May 26, 2006.

On appeal, counsel contends that the applicant has only one conviction for a crime involving moral turpitude, the conviction resulting from his January 10, 1990 arrest for dealing in stolen property and operating a chop shop. *Counsel's Memorandum of Law*, June 23, 2006, at 1. Counsel asserts that the applicant's other arrests were for "regulatory offenses" and/or did not result in convictions. *Id.* Counsel contends that the director erred in determining that the applicant's spouse and his son [REDACTED] would not experience extreme hardship if the waiver application is denied. *Id.* at 2. Counsel states that although the applicant's wife works with the applicant in his business, she depends on his financial support as her primary activity is studying to become an electrocardiogram technician. *Id.* at 2. Counsel further asserts that the applicant's son [REDACTED], who also works for the applicant, has "behavioral and psychological problems" that would be exacerbated in the applicant's absence. *Id.* at 2, 4-5. Counsel indicates that additional evidence of [REDACTED]'s medical ailments has been submitted on appeal, including an affidavit from the applicant's ex-wife in which she states that she relinquished custody of [REDACTED] because she was unable to deal with his behavior, that she believes that he has flourished under his father's custody, and that she fears the consequences to his health in the applicant's absence and without the applicant's financial support. *Id.*

In support of the appeal, counsel submits a letter dated June 21, 2006 from the applicant's ex-wife [REDACTED] accompanied by 2002 medical records for the applicant's son [REDACTED]. The record also contains, among other documents, a statement by the applicant's spouse and a copy of the deed and mortgage for the applicant's house in Florida. The entire record was reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act states in pertinent parts:

(i) In general.— . . .[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.

(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).

The Board of Immigration Appeals (BIA) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992):

[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.

The BIA and U.S. courts have found that it is the “inherent nature of the crime as defined by statute and interpreted by the courts and as limited and described by the record of conviction” and not the facts and circumstances of the particular person's case that determines whether the offense involves moral turpitude. *See, e.g., Matter of Short*, 20 I&N Dec. 136, 137 (BIA 1989); *Omagah v. Ashcroft*, 288 F.3d 254, 260 (5th Cir. 2002); *Goldeshtein v. INS*, 8 F.3d 645 (9th Cir. 1993). Neither the seriousness of the criminal offense nor the severity of the sentence imposed is determinative of whether a crime involves moral turpitude. *Matter of Serna*, 20 I&N Dec. 579, 581 (BIA 1992). Before one can be convicted of a crime of moral turpitude, the statute in question by its terms, must necessarily involve moral turpitude. *Matter of Esfandiary*, 16 I&N Dec. 659 (BIA 1979); *Matter of L-V-C*, 22 I&N Dec. 594, 603 (BIA 1999) (finding no moral turpitude where the “statutory provision . . . encompasses at least some violations that do not involve moral turpitude”).

Where a statute is divisible (broad or multi-sectional), *see, e.g., Matter of P-*, 6 I&N Dec. 193 (BIA 1954); *Neely*

v. *U.S.*, 300 F.2d 67 (9th Cir. 1962), the court looks to the “record of conviction” to determine if the crime involves moral turpitude. *Matter of Ajami*, 22 I&N Dec. 949, 950 (BIA 1999) (look to indictment, plea, verdict, and sentence; *Zaffarano v. Corsi*, 63 F.2d 67 757 (2d Cir. 1933); *U.S. v. Kiang*, 175 F.Supp.2d 942, 950 E.D. Mich. 2001). A narrow, specific set of documents comprises the record: “[the] charging document, written plea agreement, transcript of plea colloquy, and any explicit factual finding by the trial judge to which the defendant assented.” *Shepard v. U.S.*, 125 S.Ct. 1254, 1257 (2005). The Ninth Circuit has further clarified that that the charging document, or information, is not reliable where the plea was to an offense other than the one charged. *Martinez-Perez v. Gonzales*, 417 F.3rd 1022, 1028-29 (9th Cir. 2005). It is also important to note that the record of conviction does not include the arrest report. See *In re Teixeira*, 21 I&N Dec. 316, 319-20 (BIA 1996).

The record shows that the applicant was convicted on April 2, 1990 in the Eleventh Circuit Court for Dade County, Florida of Operating a Chop Shop in violation of section 812.16 of the Florida Statutes (Fla. Stat.), of two counts of Forgery/Possession of a Motor Vehicle with the Vehicle Identification Number Removed in violation of Fla. Stat. § 319.33(1)(d), of two counts of Dealing in Stolen Property in violation of Fla. Stat. § 812.019, and of Possession of an Altered Vehicle in violation of Fla. Stat. § 812.016. The record shows that the applicant was sentenced to seven years probation.

The record also shows that the applicant pled guilty on April 2, 1998 in the Eleventh Circuit Court for Dade County, Florida to three counts of Possession of a Vehicle with Altered Vehicle Identification Number in violation of Fla. Stat. § 319.33. Adjudication of guilt was withheld.

At the time of the applicant’s conviction, Fla. Stat. § 812.16 provided, in pertinent part:

(1) As used in this section, the term:

(a) “Chop shop” means any area, building, storage lot, field, or other premises or place where one or more persons are engaged or have engaged in altering, dismantling, reassembling, or in any way concealing or disguising the identity of a stolen motor vehicle or of any major component part of a stolen motor vehicle; where there are two or more stolen motor vehicles present; or where there are major component parts from two or more stolen motor vehicles present.

(2) Any person who knowingly owns, operates, or conducts a chop shop or who knowingly aids and abets another person in owning, operating, or conducting a chop shop is guilty of a felony of the third degree

At the time of the applicant’s conviction, Fla. Stat. § 812.019 provided, in pertinent part:

(1) Any person who traffics in, or endeavors to traffic in, property that he knows or should know was stolen shall be guilty of a felony of the second degree. . . .

At the time of the applicant’s conviction, Fla. Stat. § 319.33 provided, in pertinent part:

(1) It is unlawful:

(d) To possess, sell or offer for sale, conceal, or dispose of in this state a motor vehicle or mobile home, or major component part thereof, on which any motor number or vehicle identification number that has been affixed by the manufacturer or by a state agency, such as the Department of Highway Safety and Motor Vehicles, which regulates motor vehicles has been destroyed, removed, covered, altered, or defaced, with knowledge of such destruction, removal, covering, alteration, or defacement

Possession of, concealing of, or receiving stolen property with guilty knowledge are crimes involving moral turpitude. *See, e.g., Yang v. INS*, 109 F.3d 1185 (7th Cir. 1997); *Michel v. INS*, 206 F.3d 253 (2nd Cir. 2000), *De Leon-Reynoso v. Ashcroft*, 293 F.3d 633 (3rd Cir. 2002); *U.S. v. Castro*, 26 F.3d 557 (5th Cir. 1994). Likewise, crimes involving forgery are crimes involving moral turpitude. *See Matter of Seda*, 17 I&N Dec. 550 (BIA 1980). The applicant's convictions involved the knowing possession and concealing of stolen property or forged property (in the form of possessing motor vehicles with removed or altered identification numbers). The AAO finds that the applicant's crimes involved conduct that was inherently base, vile, or depraved, and which was accompanied by a vicious motive or corrupt mind. Therefore, the applicant is inadmissible under section 212(a)(2)(A)(i)(I) of the Act for multiple crimes involving moral turpitude.

The AAO notes that section 212(h) of the Act provides that a waiver of inadmissibility is dependent first upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the relatives that qualify are the applicant's spouse and sons. Hardship to the applicant himself is not relevant under the statute and will be considered only insofar as it results in hardship to a qualifying relative. If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 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. The BIA added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not an exclusive list. *See id.*

Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact 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. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

The AAO notes that in *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals held that, “the most important single hardship factor may be the separation of the alien from family living in the United States”, and that, “[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion.” (Citations omitted.) Separation of family will therefore be given appropriate weight in the assessment of hardship factors in the present case.

The AAO notes further, however, that U.S. court decisions have repeatedly held that the common results of deportation or exclusion are insufficient to prove extreme hardship. See *Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the Court defined “extreme hardship” as hardship that was unusual or beyond that which would normally be expected upon deportation. The Court emphasized that the common results of deportation are insufficient to prove extreme hardship. Moreover, the U.S. Supreme Court held in *INS v. Jong Ha Wang*, 450 U.S. 139 (1981), that the mere showing of economic detriment to qualifying family members is insufficient to warrant a finding of extreme hardship.

An analysis under *Matter of Cervantes-Gonzalez* is appropriate. The AAO notes that extreme hardship to a qualifying relative must be established in the event that he or she accompanies the applicant or in the event that he or she remains in the United States, as a qualifying relative is not required to reside outside of the United States based on the denial of the applicant’s waiver request.

In her affidavit, the applicant’s spouse states that her husband is the President of InterAmerican Used Auto Scrap and that he is the sole economic support for their household. She states that if the applicant is not allowed to remain in the country, she would be devastated emotionally and would not be able to complete her studies to become an EKG technician. She indicates that the applicant’s son [REDACTED] has been living with them since 1998 and has been diagnosed with manic depression. She states that [REDACTED] is very close to the applicant. She contends that because of the applicant, [REDACTED] received his GED and his productively working at the applicant’s business. She asserts that without the applicant, [REDACTED] will be “emotionally and psychologically devastated and the psychological damage to him would be extreme and irreversible.”

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 spouse and sons face extreme hardship if the applicant is not granted a waiver of inadmissibility.

The AAO recognizes that the applicant’s spouse and son [REDACTED] would suffer emotionally as a result of separation from the applicant if they choose to remain in the United States. However, it has not been demonstrated that this hardship, when combined with other hardship factors, rises to the level of extreme hardship. The applicant’s spouse has indicated that she and the applicant’s son [REDACTED] are financially dependent on the applicant and his business, but the applicant has failed to submit any documentary evidence of his business and finances. Likewise, though the medical records submitted demonstrate that the applicant’s son [REDACTED] suffered from depression in 2002, there is no additional evidence attesting to his current psychological state (in spite of claims by the applicant’s spouse that he has continued to receive therapy) or

demonstrating that the applicant's departure will have the impact claimed by the applicant's wife and ex-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)). Similarly, without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner'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). It is also noted that the applicant did not address the issue of whether his spouse and son would experience extreme hardship in Cuba.

Viewed cumulatively, the hardship described, and as demonstrated by the evidence in the record, is typical of individuals separated as a result of removal or inadmissibility and does not rise to the level of extreme hardship based on the record. U.S. court decisions have repeatedly held that the common results of removal or inadmissibility are insufficient to prove extreme hardship. *See Hassan v. INS*, 927 F.2d 465, 468 (9th Cir. 1991). In addition, *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), held that the common results of deportation are insufficient to prove extreme hardship and defined extreme hardship as hardship that was unusual or beyond that which would normally be expected upon deportation.

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 failed to establish extreme hardship to his U.S. citizen spouse and stepsons as required under section 212(h) of the Act. 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(i), the burden of establishing that the application merits approval remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. *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.