



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D. C. 20536

[Redacted]

File: [Redacted]

Office: MIAMI, FLORIDA

Date: 13 DEC 2001

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)

IN BEHALF OF APPLICANT:

[Redacted]

Public Copy

INSTRUCTIONS:

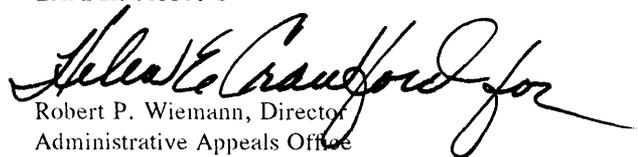
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant is a native and citizen of Nicaragua who was found to be inadmissible to the United States under 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 a crime involving moral turpitude. The applicant is married to a lawful permanent resident, is the son of a lawful permanent resident, and claims to have two United States citizen children. He seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. 1182(h), in order to adjust his status to permanent residence under the Nicaraguan Adjustment and Central American Relief Act, Public Law 105-100 (NACARA).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and denied the application and denied the application accordingly.

On appeal, counsel states that the district director erred and abused his discretion in denying the applicant an opportunity to establish that his removal from the United States will cause extreme hardship to his family. On appeal, counsel submits documentation including a brief, affidavits from the applicant and his mother, and copies of birth certificates for two children born in the United States.

The record reflects that the applicant initially entered the United States in 1989. The applicant was convicted of grand theft auto and possession of burglary tools on September 8, 1992 in the Circuit Court of the Eleventh Judicial Circuit in Dade County, Florida. On May 28, 1993, he was convicted of grand theft third, again in Dade County, Florida. The applicant was over eighteen years of age at the time of his convictions.

Section 212(a) of the Act states:

CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-
Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

* * *

(2) CRIMINAL AND RELATED GROUNDS.-

(A) CONVICTION OF CERTAIN CRIMES.-

(i) IN GENERAL.- Except as provided in clause (ii), an alien convicted of, or who admits having

committed, or who admits committing such 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.

Section 212(h) of the Act states:

The Attorney General may, in his discretion, waive application of subparagraphs (A)(i)(I),...if-

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General 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 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, 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.

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 of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

Here, fewer than 15 years have elapsed since the applicant committed his last violation. Therefore, he is ineligible for the waiver provided by section 212(h)(1)(A) of the Act.

Section 212(h)(1)(B) of the Act provides that a waiver resulting from inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984). See also Hassan v. INS, 927 F.2d 465 (9th Cir. 1991). "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. Matter of Shaughnessy, 12 I&N Dec. 810 (BIA 1968).

On appeal, counsel cites case law relating to the issue of "extreme hardship" as that term applied in matters involving suspension of deportation under section 244 of the Act, 8 U.S.C. 1254, prior to its amendment by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, recodification under section 240A of the Act, 8 U.S.C. 1230A, and redesignation as "cancellation of removal." Matter of Piltch, Interim Decision 3298 (BIA 1996); Matter of Anderson, 16 I&N Dec. 596 (BIA 1978).

In Matter of Marin, 16 I&N Dec. 581 (BIA 1978), the Board stated that, for the most part, it is prudent to avoid cross application, as between different types of relief, of particular principles or standards for the exercise of discretion. See also Matter of Mendez, 21 I&N Dec. 296 (BIA 1996). In those matters, the alien was seeking relief from removal. In the matter at hand, the alien is seeking relief from inadmissibility. It is more suitable to use case law references relating to the application of the term "extreme hardship" as found in case law relating to waivers of grounds inadmissibility under 212(i) of the Act than in case law relating to cancellation of removal.

Although the former application for suspension of deportation and the present and past applications for waiver of grounds of inadmissibility require a showing of "extreme hardship," the parameters for applying such hardship are somewhat narrower in waiver of grounds of inadmissibility application proceedings. In such proceedings, the applicant may only show that such hardship would be imposed on a spouse, parent, or child who is a citizen or

lawful permanent resident of the United States. In former suspension of deportation proceedings, the alien could show hardship to himself or herself as well as the condition of his or her health, age, length of residence beyond the minimum requirement of seven years, family ties abroad, country conditions, etc. In the present amended cancellation of removal proceedings, hardship to a nonpermanent resident alien is no longer a consideration, the alien must have been physically present for a continuous period of not less than 10 years, and the hardship to the spouse, parent, or child must be exceptional and extremely unusual.

In Matter of Cervantes-Gonzalez, Interim Decision 3380 (BIA 1999), the Board of Immigration Appeals (BIA) stipulated that the factors deemed relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act include, but are not limited to, the following: 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 finally, significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On appeal, counsel states that the applicant came to this country at a young age, has a long period of residence in the United States, has all of his immediate family here, and has no family remaining in Nicaragua. Counsel asserts that the applicant's mother is not getting any younger and that during this time of her life emotional needs the closeness of her son. Counsel also states that the applicant's spouse and children depend upon the applicant for financial and emotional support.

In Perez v. INS, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation.

The 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.

A review of the documentation in the record fails to establish the existence of hardship to a qualifying relative that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to remain in the United States. It is concluded that the applicant has not established the qualifying degree of hardship in this matter.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the discretion of the Attorney General and pursuant to such terms, conditions, and procedures as he may by regulations prescribe.

Since the applicant has failed to establish the existence of extreme hardship, no purpose would be served in discussing a favorable exercise of discretion at this time.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. Matter of Ngai, supra. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.