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U.S. Citizenship
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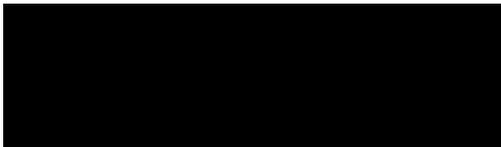
Date: MAR 01 2005

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h).

ON BEHALF OF APPLICANT:



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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida. 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 Nicaragua who submitted a Form I-485 Application to Adjust Status on March 29, 2000, under the Nicaraguan Adjustment and Central American Relief Act (NACARA). The applicant was found to be inadmissible to the United States pursuant to § 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 record indicates that the applicant is married to a U.S. citizen and that he has a U.S. citizen daughter from a previous relationship. The applicant seeks a waiver of inadmissibility in order to reside with his wife in the United States.

The district director found that, based on the evidence in the record, the applicant had failed to establish extreme hardship to his U.S. citizen spouse and child. The application was denied accordingly. On appeal, counsel asserts that the applicant's wife, mother, and child will suffer psychological and financial trauma if the applicant is removed from the United States. Counsel also contends that the applicant's daughter's medical conditions require the applicant's presence.

Section 212(a)(2)(A) of the Act states in pertinent part, that:

(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.

Section 212(h) states in pertinent part that:

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if-

(1)(A) [I]t is established to the satisfaction of the Attorney General that-

(i) [T]he 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.

The applicant's conviction for grand theft vehicle, burglary (unoccupied), grand theft third degree, and criminal mischief over \$1000 occurred in 1994, less than 15 years prior to the adjudication of his adjustment of status application. The applicant is therefore statutorily ineligible for a waiver pursuant to § 212(h)(1)(A) of the Act. He is however, eligible to apply for a waiver of inadmissibility pursuant to § 212(h)(B) of the Act.

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (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. These factors included 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.

Counsel contends that the applicant will most likely be unable to obtain any employment in Nicaragua; therefore he will be unable to contribute to his family's finances if he is removed. The record does not contain any evidence that the applicant will be unable to work in Nicaragua, however. Although the record contains financial documentation, it does not establish that the applicant's wife or that the mother of his child would be unable to make any financial or household adjustments necessary to accommodate the changed situation in the event of his removal. The evidence does not reflect that the applicant supports his mother. In sum, the applicant has not established that his family members will undergo severe economic hardship if he is removed.

Counsel refers to a letter from [REDACTED] M.D., who wrote that the applicant's daughter suffers from severe asthma and polyarthralgia. Dr. [REDACTED] stated that the applicant's daughter "needs to be around both parents at all times," and that "separation from any one of the parents will be most detrimental to her health." Although the record reflects that the applicant spends time with his daughter at the daycare center where he works, and that he took her to several doctor's appointments, the evidence does not indicate how her medical conditions require his presence. There is no description of the conditions' effect on her life, no evidence that her mother is unable to fully care for her, and no evidence that the child requires more than average care. In addition, it is noted that many of the applicant's close relatives reside in the United States, and there is no evidence that they are unavailable to assist in caring for his daughter. The record does not establish that the applicant's daughter will suffer any medical consequences if the applicant departs the United States.

Counsel also states that the applicant's mother requires the applicant's emotional support, and that his family would be emotionally devastated by his absence. The AAO fully recognizes the emotional impact of the removal of a family member. Sadness and depression, however, are the normal reactions experienced by most individuals in this situation. The record does not establish that the applicant's family would experience greater emotional hardship than the majority of individuals touched by the removal of a family member.

U.S. court decisions have 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, *Matter of Pilch*, 21 I&N Dec. 627 (BIA 1996), held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. 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. *Hassan v. INS, supra*, held further that the uprooting of family and separation from friends does not necessarily amount to extreme hardship but rather represents the type of inconvenience and hardship experienced by the families of most aliens being deported. Moreover, the U.S. Supreme Court additionally 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, when considered in its totality, reflects that the applicant has failed to show that his U.S. citizen spouse and child would suffer hardship that was unusual or beyond that which would normally be expected upon removal. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under § 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. 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.