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U.S. Citizenship  
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FILE: [REDACTED] Office: MIAMI, FL Date: JUL 07 2006

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:



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 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 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 the parent of citizens of the United States and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside in the United States with his spouse and children.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and had failed to demonstrate that he was entitled to a favorable exercise of discretion. The district director denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated December 3, 2004.

On appeal, counsel contends that although the applicant committed a serious crime which is not justifiable, the crime occurred over nine years ago, the applicant has held a full time job over the years and is married and the father of United States citizens. *Form I-290B*, dated December 28, 2004. In support of these assertions, counsel submits a brief; copies of the medical records of the applicant's children and a country condition report for Nicaragua. The entire record was reviewed and considered in rendering a decision.

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

(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 . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I) . . . of subsection (a)(2) . . . if -

....

(1)(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 . . .

On July 3, 1995, the applicant entered a plea of guilty to false imprisonment and strong arm robbery in the Circuit Court of the Eleventh Judicial Circuit in and for Dade County, Florida. He was sentenced to 163 days credit for time already served followed by one year of probation. On August 12, 1996, the applicant's probation was revoked as the result of a probation violation in relation to the above case and he was sentenced to 180 days imprisonment with credit for time served.

A section 212(h) waiver of the bar to admission resulting from section 212(a)(2)(A) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, child or parent of the applicant. Hardship the alien himself experiences upon deportation is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is that suffered by the applicant's children. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

The AAO notes that counsel refers to the applicant's spouse as a qualifying relative in the application. *Applicant's Brief in Support of I-601 Waiver*, undated. The record reflects that the applicant's spouse is neither a lawful permanent resident of the United States nor a citizen of the United States and, therefore, the record fails to establish that the applicant's spouse is a qualifying relative for purposes of section 212(h) waiver proceedings.

*Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560 (BIA 1999) provides a list of factors the Board of Immigration Appeals deems relevant in determining whether an alien has established extreme hardship pursuant to section 212(i) of the Act. These 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.

On appeal, counsel contends that the applicant's children suffer from poor appetite and that the applicant's younger daughter also suffers from constipation and blood in the stool. *Applicant's Brief in Support of I-601 Waiver*. In support of these assertions, counsel submits copies of medical records for the applicant's children. While any medical suffering endured by the applicant's children is regrettable, the described symptoms do not amount to extreme hardship. While counsel asserts that the applicant's children are "under treatment", the record fails to evidence the frequency and/or nature of the referenced treatment and the record does not establish that the children's stated symptoms have led to diagnosis of an identified medical condition or conditions. *Id.* The AAO acknowledges counsel's submission of a country condition report for Nicaragua in support of her assertion that "[t]he country conditions in Nicaragua with regard to medical care are very poor." *Id.* However, in the absence of documentation explaining the type of medical care that the applicant's children require, the AAO is unable to make a determination that the medical care in Nicaragua is insufficient to meet their needs.

Moreover, the record makes no assertions regarding the other factors identified in *Matter of Cervantes-Gonzalez* and therefore, fails to address the qualifying relatives' family ties outside the United States; the conditions in the country or countries to which the qualifying relatives would relocate and the extent of the qualifying relatives' ties in such countries; and the financial impact of departure from this country.

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, *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 AAO notes that 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. The AAO recognizes that the applicant's children would endure hardship as a result of separation from the applicant or as a result of relocating to Nicaragua in order to remain with the applicant. However, their situation, based on the record, is typical to individuals separated as a result of deportation or exclusion and does not rise to the level of extreme hardship.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's children caused by the applicant's inadmissibility to the United States. 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(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *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.