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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

FILE: [redacted] Office: SAN FRANCISCO (SAN JOSE) Date: MAR 27 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:

SELF-REPRESENTED

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco, and 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 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 been convicted of 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 remain in the United States.

The district director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated September 9, 2004.

On appeal, the applicant contends that his U.S. citizen mother and son will suffer extreme hardship if he is prohibited from entering the United States. *Statement from Applicant in Support of Appeal.*

The record contains a statement from the applicant in support of the appeal; copies of the applicant's mother's medical bills; a statement from the applicant's mother in support of the Form I-601, Application for Waiver of Ground of Excludability; photographs of the applicant's mother; documentation of the applicant's criminal history; a copy of the applicant's birth certificate; a copy of the applicant's mother's naturalization certificate; copies of the applicant's Form I-94 and passport; a copy of a document releasing the applicant from U.S. military service, and; an employment verification letter for the applicant. The entire record was reviewed and considered in rendering this decision.

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

> (A)(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) of the Act provides, in pertinent part, that:

> (h) The Attorney General [now Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) [or] (B) . . . 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 [now the Secretary of Homeland Security (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 . . . .

The record reflects that the applicant has been convicted of six crimes, including two violations of California Penal Code 261.5 (unlawful intercourse with a person under 18) on September 6, 1989, and a violation of California Penal Code 243.4(a) (sexual battery of a victim) on April 26, 2003. Such sexual offenses constitute crimes involving moral turpitude. Accordingly, the applicant was found inadmissible under section 212(a)(2)(A)(i)(I) of the Act.[1] The applicant does not contest his inadmissibility on appeal.

The AAO notes that section 212(h)(1)(B) 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. Hardship the applicant himself experiences due to his inadmissibility is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's U.S. citizen mother, or his claimed U.S. citizen son. *Id.* If extreme hardship is established, the Secretary then assesses whether an exercise of discretion is warranted. Section 212(h) 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, parent, or child 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.

Relevant factors, though not extreme in themselves, must be considered in 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).

In addition, the Ninth Circuit Court of Appeals case, *Salcido-Salcido v. INS,* 138 F.3d 1292, 1293 (9th Cir. 1998), 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.) The AAO notes that the present case arises within the jurisdiction of the Ninth Circuit Court of Appeals. The AAO further notes that the applicant's mother or child would possibly remain in the United States if the

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[1] The applicant noted that his probation officer informed him he may be eligible to have his felony convictions reduced to misdemeanors. However, the applicant has not provided any documentation to show that his convictions for multiple sexual offenses have been revisited or altered by the State of California. Thus, the AAO will not address whether the applicant's possible eligibility for an amendment to his criminal record has a bearing on his inadmissibility under section 212(a)(2)(A)(i)(I) of the Act.

applicant departs. Separation of family will therefore be carefully considered in the assessment of hardship factors in the present case.

On appeal, the applicant contends that his U.S. citizen mother will suffer hardship should he be prohibited from remaining in the United States. *Statement from Applicant in Support of Appeal.* The applicant states that his mother's health is poor, and that she is experiencing significant emotional hardship regarding his possible removal. *Id.* The applicant explains that he provides assistance for his mother, including language translation, transportation for medical needs, and financial assistance. *Id.* The applicant's mother stated that she has suffered three strokes, and she has palpitations, thyroid problems, and arthritis. *Statement from Applicant's Mother in Support of Form I-601 Application.* The applicant's mother noted that the applicant is her youngest son, and that their entire family has been granted asylum in the United States. *Id.* She explained that some of her sons and daughter worked for the government of Nicaragua, and that the family faces harm from Sandinistas if they return. *Id.*

The applicant noted that he has a U.S. citizen son. *Statement from Applicant in Support of Appeal.*

Upon review, the applicant has failed to show that his mother or son will suffer extreme hardship should he be prohibited from remaining in the United States. While the applicant states that he has a U.S. citizen son, he has submitted no documentation to support this assertion, such as his son's birth certificate, naturalization certificate, or evidence of his son's permanent residence in the United States. The applicant has not provided any explanation regarding where his son is located, how his son would be affected by the applicant's absence, or what is his son's name. 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)). As the applicant has not established that he in fact has a son, speculative hardship to such individual cannot be considered in the present proceeding.[2]

The applicant indicates that he provides financial support for his mother, including assistance with her bills. However, the applicant has submitted no documentation to show that he has provided funds for his mother or that he has paid her bills. The applicant submitted copies of his mother's medical bills, yet each reflects that the final balance is anticipated to be fulfilled by insurance. *Copies of Medical Bills of Applicant's Mother.* The applicant's mother stated that she has a low income and that the applicant helps her financially, yet she did not provide detail regarding the amount or form of financial assistance the applicant provides. *Statement from Applicant's Mother in Support of Form I-601 Application.* Again, 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. at 165. Further, the applicant has not indicated his mother's current income or her economic needs. Therefore, the AAO cannot determine if his mother in fact requires an outside financial contribution. The applicant's mother noted that she has at least one other son and a daughter, and that her

[2] The district director stated that hardship to any U.S. citizen children of the applicant is not a relevant issue in waiver proceedings under section 212(i) of the Act. However, the present waiver proceeding is subject to the requirements of section 212(h) of the Act, not section 212(i) of the Act. Had the applicant properly established that he in fact has a U.S. citizen child, hardship to such child would have been considered. As discussed above, the applicant has failed to document that he has a child.

entire family has been granted asylum in the United States. *Statement from Applicant's Mother in Support of Form I-601 Application.* However, the applicant and his mother have not provided how many children the applicant's mother has, whether they are in the United States, and whether they also assist the applicant's mother. Thus, the applicant has failed to show that he provides funds to his mother, or that she requires his financial assistance such that the applicant's absence would constitute an economic burden for her.

While the applicant's mother suffers from several chronic illnesses, the applicant has not established that any of them are the result of, or are significantly exacerbated by, the applicant's possible removal. The applicant has not established that his mother depends on him for her healthcare needs.

The applicant explains that his mother is enduring significant emotional consequences of his possible removal. The AAO acknowledges that the applicant and his mother wish to remain together, and that separation is emotionally difficult. However, the applicant has not established that these consequences go beyond those which are commonly experienced by the families of aliens deemed inadmissible. 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. The applicant's mother explained that her entire family has been granted asylum in the United States. Without explanation to the contrary, it appears that the applicant's mother will have the companionship and support of her other children in the applicant's absence.

As the applicant's mother expressed a fear of serious harm or death should her family members return to Nicaragua, it is understood that her joining the applicant abroad is not under consideration. Thus, family separation is a likely consequence of the applicant's inadmissibility. Yet, as discussed above, the applicant has failed to show that his mother would suffer consequences that go beyond those commonly experienced by the family members of those deemed inadmissible.

Based on the foregoing, the applicant has not shown that, should he be prohibited from remaining in the United States, his mother will suffer hardship that is unusual or beyond that which would normally be expected. The applicant has not established that his mother's health status will result in extreme hardship due to his inadmissibility. Thus, the documentation in the record fails to establish the existence of extreme hardship to the applicant's mother 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.