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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: MIAMI Date: SEP 21 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:

[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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida, 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 committed a crime involving moral turpitude. The applicant has filed an Application to Register Permanent Residence or Adjust Status (Form I-485) under section 202 of the Nicaraguan Adjustment and Central American Relief Act, Public Law 105-100 (NACARA). 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 with his two lawful permanent resident children, Dennise Almanza Valentin and Roberto Almanza-Sediles.

The district 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 District Director*, dated May 31, 2005.

On appeal, counsel asserts that the evidence shows that the applicant's two lawful permanent resident children will suffer extreme hardship if the applicant is removed. Counsel notes that the applicant's son Roberto now lives with the applicant and the applicant pays his university tuition as well as other college-related expenses, circumstances that did not exist at the time the district director issued his decision.

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

> (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.

Court documents in the record reflect that the applicant pled guilty and was convicted in the Circuit Court of the Eleventh Judicial Circuit in Dade County, Florida on April 26, 1995 of Aggravated Assault with a Firearm in violation of section 784.021(1)(a) of the Florida Statutes, and Carrying a Concealed Weapon in violation of section 790.01(2) of the Florida Statutes. Both offenses were third degree felonies punishable by up to 5 years of incarceration. *See* Fla. Stat. § 775.082. The applicant was sentenced to two years probation.

The Board of Immigration Appeals has consistently found that aggravated assault is a crime involving moral turpitude. *See In re Torres-Varela*, 23 I. & N. Dec. 78, 84 (BIA 2001) (citing *Matter of Medina*, 15 I. & N. Dec. 611, 612 (BIA 1976)). On the other hand, courts have generally found that the crime of carrying a concealed weapon is not a crime involving moral turpitude. *See, e.g. U.S. ex rel. Andreacchi v. Curran*, 38 F.2d 498 (S.D.N.Y. 1926); *Matter of Granados*, 16 I. & N. Dec. 726 (BIA 1976). It is unclear from the decision whether the district director found both of the applicant's criminal offenses to be crimes involving moral turpitude, as the district director did not discuss each offense separately. To the extent that the district director determined that the applicant's conviction for carrying a concealed weapon is a crime involving moral turpitude, such determination is withdrawn. Nevertheless, the applicant's aggravated assault conviction

is a crime involving moral turpitude that renders the applicant inadmissible pursuant to section 212(a)(2)(A)(i)(I). Counsel has not disputed on appeal that the applicant's conviction renders him inadmissible.

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

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

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. 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.)

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 Ninth Circuit Court of Appeals defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation. The Ninth Circuit 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.

The record includes counsel's brief; documentation of the applicant's criminal record; a statement by the applicant; an affidavit from the applicant's daughter accompanied by her marriage certificate; a statement by the applicant's son accompanied by school records; medical, tax, employment and other financial records for the applicant; and birth records for the applicant's children. The entire record was reviewed and considered in rendering a decision on the appeal.

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 children face extreme hardship if the applicant is not granted a waiver of inadmissibility.

As noted in the district director's decision, the applicant's daughter [redacted] is married and lives with her husband. There is no indication in the record that she would relocate to Nicaragua with her father or that she would suffer hardship if he is removed and she remains in the United States. In her affidavit, Ms. [redacted] states only that her father should be allowed to stay in the United States "because of the close relationship and financial support that he provides for my brother, his son, [redacted]

The applicant has failed to demonstrate, however, the extent to which his son [redacted] depends on his financial assistance, or that the applicant would be unable to provide such financial support from Nicaragua. Counsel has asserted that the applicant's son lives with the applicant and the applicant pays his college tuition and other expenses, but there is no evidence in the record to support these assertions. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the applicant'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).

The AAO recognizes that the applicant's son would suffer emotionally as a result of separation from the applicant if he chooses to remain in the United States, but there is insufficient evidence in the record demonstrating that his situation is atypical of individuals separated as a result of removal or inadmissibility and it 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.

Also, the applicant has failed to demonstrate that his son will experience hardship if he relocates to Nicaragua. Neither the applicant nor his son addresses this issue in their statements. Counsel asserts that relocation is not a viable option for the applicant's son. However, as indicated above, the unsupported assertions of counsel do not constitute evidence.

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 lawful permanent resident children 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.