

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

H2

[Redacted]

FILE:

[Redacted]

Office: MIAMI, FL

Date: MAY 24 2005

IN RE:

[Redacted]

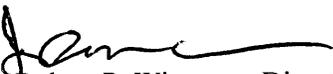
APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the
Immigration and Nationality Act, 8 U.S.C. § 1182(h)

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.

For 
Robert P. Wiemann, Director
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 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 son of a lawful permanent resident 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 mother.

The district director concluded that the applicant had 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 July 7, 2004.

On appeal, counsel contends that the applicant established that his mother would suffer extreme emotional and financial hardship if the applicant cannot adjust status in the United States. *Brief for the Appellant on Appeal from the Decision of the District Director in Miami, Florida*, undated. In support of this assertion, counsel submits copies of medical records regarding the applicant's mother; a letter regarding the employment of the applicant's mother and a copy of a report addressing country conditions in Nicaragua. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on November 13, 1998, the applicant was convicted of Aggravated Battery with a Deadly Weapon in the Eleventh Judicial Circuit Court for Dade County, Florida. The applicant was sentenced to probation for a period of two years.

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 . . .

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. Any hardship suffered by the applicant himself is irrelevant to waiver proceedings under section 212(h) of the Act. 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).

Matter of Cervantes-Gonzalez, 22 I&N Dec. 560, 565-566 (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.

Counsel contends that the applicant's mother suffers from hypertension and uveitis, a condition of the eye. *Brief for the Appellant on Appeal from the Decision of the District Director in Miami, Florida*. In support of these assertions, counsel submits a letter from a physician treating the applicant's mother for hypertension and overweight condition. *Letter from Dr. Julio Menache*, dated August 16, 2002. In addition, counsel submits illegible paperwork partially written in Spanish relating to the treatment of the applicant's mother at the Bascom Palmer Eye Institute/Anne Bates Leach Eye Hospital, dated April 13, 2004. Counsel states, "Ocular complications of uveitis may produce profound and irreversible loss of vision, especially when unrecognized and treated improperly." *Brief for the Appellant on Appeal from the Decision of the District Director in Miami, Florida*. Counsel contends that if the applicant departs from the United States his mother will be unable to continue the required treatment to save her eye since the applicant would not be able to work. *Id.* The record fails to establish that the applicant's mother is at risk of losing her eye. While counsel contends that the applicant's mother suffers from uveitis, the record fails to reflect she is at risk of enduring the "profound and irreversible loss of vision" which may accompany that condition. Moreover, the record fails to establish why the applicant's removal from the United States would result in his mother's inability to obtain treatment for her medical conditions. Although counsel contends that the district director erred in stating the employment history of the applicant's mother, the record does reflect that the applicant's mother has maintained employment in several capacities. *Brief for the Appellant on Appeal from the Decision of the District Director in Miami, Florida* (stating that the applicant's mother has worked as a server, a cook and a hairdresser among other occupations). *See also Letter from Rosa Martinez, Assistant Manager, Avon*, undated and English translation. The record does not establish that the applicant's mother is unable to obtain and maintain employment as a result of her hypertension, overweight condition and/or uveitis. The assertions of counsel are speculative based on the record as it stands on appeal.

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 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 mother will likely endure hardship as a result of separation from the applicant. However, her 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 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.