



U.S. Citizenship
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FILE:

[REDACTED]

Office: MIAMI, FL

Date: SEP 28 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.

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 record reflects that 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 (aggravated battery, shooting or throwing a deadly missile and aggravated assault with a deadly weapon). The record indicates that the applicant has a U.S. citizen spouse, U.S. citizen father, lawful permanent resident mother, two U.S. citizen children and three U.S. citizen stepchildren. The applicant seeks a waiver of inadmissibility in order to reside with his family in the United States.

The district director found 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. *District Director's Decision*, dated April 2, 2001.

On appeal, counsel asserts that the district director failed to consider all of the factors and failed to mention all of the qualifying relatives. *Letter in Support of Appeal*, undated.

The record contains the aforementioned letter, affidavits from the applicant's wife, mother and daughter and proof of employment for the applicant. The entire record was reviewed and considered in arriving at a decision on the appeal.

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) 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) . . . 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.

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 (BIA 1999) the Board of Immigration Appeals (BIA) provided a non-exclusive list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included the presence of lawful permanent resident or United States citizen family ties to 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 record indicates that the qualifying relatives have family ties in the United States, which include each other and the applicant's four lawful permanent resident siblings. There is no mention of family or any other ties outside of the United States for any of the qualifying relatives.

There is no mention of country conditions in Nicaragua. The AAO notes that Nicaragua is currently listed as a country whose nationals are eligible for Temporary Protected Status due to the damage done to the country from Hurricane Mitch and the subsequent inability of Nicaraguans to handle the return of its nationals. *Federal Register*, Volume 69, Number 212, November 3, 2004.

Counsel asserts that the applicant's family relies on him for economic support and the applicant's stepchildren receive no economic support from their biological father. *Letter in Support of Appeal*, at 2-3. Counsel asserts that the applicant's family would be forced to move from their home without the applicant's economic support. *See id.* at 3. Counsel asserts that the applicant's wife could not meet the family's economic needs, even if she found a job. *Id.* The record indicates that the applicant's wife is currently self-employed. *Form G-325, Biographic Information*, dated October 4, 1997. Also, there is no evidence that the applicant cannot find employment in Nicaragua or that the adult stepchild cannot provide financial support to the family.

There is no mention of significant conditions of health, particularly when tied to an unavailability of suitable medical care in Nicaragua, although counsel asserts that separation from the applicant would be emotionally damaging to the children.

Counsel asserts that the district director failed to consider all of the relevant factors, however, the AAO notes that the applicant did not submit any supporting documents with his initial application and the district director could only make his decision based on the record presented.

The qualifying relatives would face hardship if they relocate to Nicaragua due to the damage done to the country from Hurricane Mitch, however, extreme hardship has not been shown in the event that the qualifying relatives remain in the United States with access to employment.

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 a qualifying relative would suffer hardship that is 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 section 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.