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U.S. Department of Homeland Security
U.S. Immigration and Citizenship Services
Office of Administrative Appeals
20 Massachusetts Avenue, N.W., MS 2090
Washington, DC 20529-2090
**U.S. Citizenship
and Immigration
Services**



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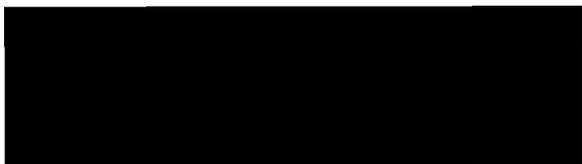
FILE: 

IN RE:

Applicant: 

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

for Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Kendall, Florida, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The applicant is a native and citizen of Nicaragua who was found to be inadmissible 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 crimes involving moral turpitude. The director indicated that the applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

On appeal, counsel contends that the director erred in finding that the applicant's lawful permanent resident spouse and U.S. citizen son and daughter will not experience extreme hardship if the applicant were barred admission to the United States. Counsel states that the applicant's wife has serious health problems and will not be able to obtain acceptable medical care in Nicaragua. Counsel maintains that in regard to joining the applicant to live in Nicaragua, when the hardship factors of the detrimental impact on the applicant's wife's health, of separation from family in the United States, of lack of family ties to Nicaragua, and of emotional and financial hardship are combined, they result in extreme hardship.

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

(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.

On April 25, 2000, the applicant pled guilty to and was convicted of burglary (unoccupied residence) and petit theft in Florida. The director found the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. As the applicant has not disputed inadmissibility on appeal, and the record does not show the finding of inadmissibility to be erroneous, we will not disturb the finding of the director.

The waiver for inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is under section 212(h) of the Act. That section 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 -

...

(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 violation of section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent, son, or daughter of the applicant. Hardship to the applicant is not a consideration under the statute and will be considered only to the extent that it results in hardship to a qualifying relative. The qualifying relatives in this case are the applicant's U.S. citizen son and daughter and lawful permanent resident spouse. If extreme hardship to the qualifying relative is established, the Secretary then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). 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. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. *See generally Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "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." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. *See, e.g., Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. *See Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); *but see Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

In rendering this decision, the AAO will consider all of the evidence in the record.

On appeal, counsel maintains that the applicant has a close relationship with his wife, with whom he has been married for many years, and with his son and daughter. Additionally, counsel states that the applicant's family members have strong ties to the United States. Counsel indicates that the applicant's son and daughter have spent their entire lives here and have no relatives in Nicaragua. Counsel states that the applicant's daughter has a young child and attends community college, and the applicant's son works part time and attends technical school full time. Counsel conveys that the applicant's wife earns \$250 a week and is distressed about not being able to financially support her family, including her grandchild, without the applicant's income. Counsel conveys that the applicant's wife takes medication for high blood pressure and depression, and that the applicant's wife's depression is a consequence of the applicant's immigration problems. Counsel describes conditions in Nicaragua, stating that there is rampant violence, high unemployment, extreme poverty, and lack of access to clean water and health care. Counsel asserts that relocation to Nicaragua will be difficult for the applicant's family members, and especially for the applicant's wife.

The asserted hardship factors in the instant case are the emotional and financial hardship to the applicant's family members if they remain in the United States without the applicant. We acknowledge that the letters by the applicant's family members convey their close relationship with the applicant and their emotional hardship without him. Additionally, doctor's letters dated August 26, 2009 state that the applicant's wife is receives treatment for hypertension and headaches, and generalized anxiety and depression. Income tax records show the applicant was employed as a painter, and wage statements reflect the applicant's wife as earning \$7.52 per hour in 2009. As the record indicates the applicant and his wife have a monthly home loan of \$872 as well as household and vehicle expenses, the applicant's wife's income will not be enough to pay the home loan and other expenses, and even if her son and daughter worked part time, their contribution will most likely not be sufficient for all of their needs as they will also have the added expense of childcare. When the financial and hardship factors are considered collectively, they demonstrate that the

applicant's wife will experience extreme hardship if remains in the United States without her husband.

In regard to joining the applicant to live in Nicaragua, the asserted hardships to the applicant's wife are financial and emotional in nature. Counsel's statement about social and economic conditions in Nicaragua are consistent with the submitted the U.S. Department of State documents. The consular information sheet states that Nicaragua's economy is among the poorest in the hemisphere, medical care is very limited and treatment for serious medical problems are unavailable or available only in Managua, and certain types of medications and medical equipment are not available. U.S. Department of State, Bureau of Consular Affairs, *Country Specific Information – 2009: Nicaragua*, 1, 7 (August 6, 2009). The human rights report stated that the monthly minimum wage of approximately \$71 in the agricultural sector and \$166 in the financial sector is enforced only in the formal sector, and was below the \$455 basic cost of goods for an urban family. U.S. Department of State Bureau of Democracy, Human Rights, and Labor, *Country Reports on Human Rights Practices – 2008: Nicaragua*, 20 (February 25, 2009). Additionally, the U.S. Agency for International Development (USAID) report stated that almost half of the population in Nicaragua lives below the poverty line. U.S. Agency for International Development, *Latin America and the Caribbean, Country Profile: Nicaragua*, 1 (August 13, 2009). Finally, the submitted United Nations Children's Fund document dated August 25, 2009 stated of Nicaragua that 40 percent of the population has no access to health services, 60 percent receive low-quality services, and a third of the population had no access to sources of drinking water. The record reflects that the applicant and his wife have held menial, low-wage jobs in the United States. In view of the limited education and skills of the applicant and his wife and the aforementioned conditions in Nicaragua, they are not likely to have good employment options. When the financial, emotional and other hardship factors are considered collectively, they demonstrate that the applicant's wife will experience extreme hardship if she joins her husband to live in Nicaragua.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996), the Board stated that once eligibility for a waiver is established, it is one of the favorable factors to be considered in determining whether the Secretary should exercise discretion in favor of the waiver. Furthermore, the Board stated that:

In evaluating whether section 212(h)(1)(B) relief is warranted in the exercise of discretion, the factors adverse to the alien include the nature and underlying circumstances of the exclusion ground at issue, the presence of additional significant violations of this country's immigration laws, the existence of a criminal record, and if so, its nature and seriousness, and the presence of other evidence indicative of the alien's bad character or undesirability as a permanent resident of this country. The favorable considerations include family ties in the United States, residence of long duration in this country (particularly where alien began residency at a young age), evidence of hardship to the alien and his family if he is excluded and deported, service in this country's Armed Forces, a history of stable employment, the existence of property or business ties, evidence of value or service in the community, evidence of genuine rehabilitation if a criminal record exists, and other evidence attesting to the alien's good character (e.g., affidavits from family, friends and responsible community representatives).

Id. at 301.

The AAO must then, “[B]alance the adverse factors evidencing an alien’s undesirability as a permanent resident with the social and humane considerations presented on the alien’s behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country.” *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the criminal convictions of burglary (unoccupied dwelling) and petit theft in 2000, and any unauthorized employment and unauthorized presence.

The favorable factors are the extreme hardship to the applicant’s wife, his family and property ties to the United States, and the 11 years since the applicant’s criminal convictions in 2000. When taken together, we find the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the appeal will be sustained.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has now met that burden. Accordingly, the appeal will be sustained and the waiver application will be approved.

ORDER: The appeal is sustained.