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



U.S. Citizenship  
and Immigration  
Services

Date: APR 15 2013

Office: LOS ANGELES

FILE: [REDACTED]

IN RE: Applicant: [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:

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.

If you believe the AAO inappropriately applied the law in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-190B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

A handwritten signature in black ink that reads "Michael Shumway".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Los Angeles, California, 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 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 crimes involving moral turpitude. The applicant is the son of a U.S. citizen. The applicant filed an Application for a Waiver of Ground of Inadmissibility (Form I-601) in conjunction with his application for adjustment of status in order to remain in the United States with his U.S. citizen mother and U.S. citizen children.

In a decision dated November 29, 2011, the field office director concluded that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 waiver application accordingly.

On appeal, counsel contends that the applicant merits a favorable exercise of discretion and that the field office director erred in denying the waiver application. Counsel states that the applicant is the sole caregiver and custodian of his children and that the children's mother is unable to care for them pursuant to a court order by a family court in California. Counsel asserts that the evidence outlining psychological, emotional and financial difficulties demonstrates extreme hardship to the applicant's qualifying relatives. Counsel submits new evidence on appeal consisting of psychological evaluations of the applicant's qualifying relatives.

The record includes, but is not limited to: counsel's brief; psychological evaluations; copies of birth certificates; a copy of the applicant's I-94 and passport; letters prepared by the applicant's children; proof of citizenship and lawful status of the applicant's family members; declarations by the applicant's mother and sister; letter by the Los Angeles Department of Children and Family Services indicating that the applicant has sole custody of his three minor children; an employment reference letter; letters by school officials; documentation concerning the applicant's completion of domestic violence classes; and documentation regarding the applicant's criminal history.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The entire record has been reviewed and considered in rendering a decision on the appeal.

Section 212(a)(2)(A) of the Act provides, 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

The Board of Immigration Appeals (Board) held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992), that:

[M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general....

In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required *mens rea* may not be determined from the statute, moral turpitude does not inhere.

(Citations omitted.)

The field office director found the applicant inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act for his January 3, 1996, juvenile delinquent adjudication for robbery in violation of section [REDACTED]. The record reflects that the applicant committed the offense on November 15, 1995, and that he was subject to juvenile delinquency proceedings for this offense in the [REDACTED]. Here, the AAO finds that the applicant, born on January 16, 1978, was only 17 years old at the time of the commission of the offense and at the time of his adjudication as a juvenile delinquent before the [REDACTED].

In its decision, *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000), the Board stated that “[w]e have consistently held that juvenile delinquency proceedings are not criminal proceedings, that acts of juvenile delinquency are not crimes, and that findings of juvenile delinquency are not convictions for immigration purposes. *Matter of Devison*, 22 I&N Dec. at 1365; see *Matter of De La Nues*, 18 I&N Dec. 140 (BIA 1981) (finding that an adjudication of juvenile delinquency is not a conviction for a crime within the meaning of the Act); *Matter of C-M-*, 5 I&N Dec. 327, 329 (BIA 1953) (finding that changes in the immigration laws did not affect prior administrative holdings that juvenile delinquency is not a crime); *Matter of F-*, 4 I&N Dec. 726 (BIA 1952) (ruling that an offense committed before the offender’s 18th birthday was an act of juvenile delinquency, not a crime). Importantly, the Board added, “[w]e have also held that the standards established by Congress, as embodied in the [Federal Juvenile Delinquency Act] (FJDA), govern whether an offense is to be considered an act of delinquency or a crime.” *Matter of Devison*, 22 I&N Dec. at 1365.

The FJDA defines a ‘juvenile’ as ‘a person who has not attained his eighteenth birthday, or for the purpose of proceedings and disposition under this chapter for an alleged act of juvenile delinquency, a person who has not attained his twenty-first birthday,’ and ‘juvenile delinquency’ as “the violation of a law of the United States committed by a person prior to his eighteenth birthday which would have been a crime if committed by an adult.” *Matter of Ramirez-Rivero*, 18 I&N Dec. 135, 137 (BIA 1981) (citing 18 U.S.C. § 5031). The FJDA makes it clear that a juvenile delinquency proceeding results in the adjudication of a status rather than conviction for a crime. See 18 U.S.C. §§ 5031-5032. The FJDA defines a “juvenile” as a person less than 18 years of age, and a “juvenile delinquency” as any federal crime committed by a juvenile. 18 U.S.C. § 5031. Until a person is 21 years of age, he or she can be charged as a juvenile for an offense committed while under 18 years of

age. *Id.* Thus, the FJDA applies to any person below the age of 21 who has committed an offense before reaching his or her 18<sup>th</sup> birthday. Applying the foregoing standards to the present case, it appears that the applicant's January 3, 1996 robbery adjudication is for an act of juvenile delinquency and not a conviction for immigration purposes.

However, the applicant has other criminal convictions. The record reflects that the applicant was convicted on October 5, 2000 in the [REDACTED] of fraud. The applicant was sentenced to time served in jail and five years of supervised release. The record further reflects that on May 24, 2004, the applicant was convicted in the [REDACTED] of battery on former spouse in violation of section [REDACTED]. For this offense, the applicant was sentenced to three years of probation, six days in jail work time and was fined \$100. Additionally, the record shows that on April 16, 2007, the applicant was convicted in the [REDACTED] of inflicting corporal injury upon a child in violation of section [REDACTED]. The applicant was sentenced to three years of probation, 30 days imprisonment, and payment of restitution.

The field office director found the applicant inadmissible under section 212(a)(2)(A)(i)(I) of the Act for having been convicted of crimes involving moral turpitude. As the applicant does not dispute inadmissibility from these criminal convictions on appeal, and the record does not show the determination to be erroneous, the AAO will not disturb the finding of the field office director.

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), (B), . . . 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 begins its analysis by noting that a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act is first dependent upon a showing that the bar to admission imposes an extreme hardship on a qualifying family member. In this case, the applicant asserts that denial of his admission will impose extreme hardship upon his U.S. citizen mother and three U.S. citizen children. If extreme hardship to a qualifying relative is established, USCIS then assesses whether an exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996). However, the AAO cannot find that the applicant merits a favorable exercise of discretion solely by balancing the applicant's favorable and adverse factors. The applicant's conviction indicates that he may be subject to the heightened discretion standard of 8 C.F.R. § 212.7(d).

The applicant was convicted of inflicting corporal injury upon a child. The regulation at 8 C.F.R. § 212.7(d) provides:

The Attorney General [Secretary, Department of Homeland Security], in general, will not favorably exercise discretion under section 212(h)(2) of the Act (8 U.S.C. 1182(h)(2)) to consent to an application or reapplication for a visa, or admission to the United States, or adjustment of status, with respect to immigrant aliens who are inadmissible under section 212(a)(2) of the Act in cases involving violent or dangerous crimes, except in extraordinary circumstances, such as those involving national security or foreign policy considerations, or cases in which an alien clearly demonstrates that the denial of the application for adjustment of status or an immigrant visa or admission as an immigrant would result in exceptional and extremely unusual hardship. Moreover, depending on the gravity of the alien's underlying criminal offense, a showing of extraordinary circumstances might still be insufficient to warrant a favorable exercise of discretion under section 212(h)(2) of the Act.

The AAO notes that the words "violent" and "dangerous" and the phrase "violent or dangerous crimes" are not further defined in the regulation, and the AAO is aware of no precedent decision or other authority containing a definition of these terms as used in 8 C.F.R. § 212.7(d). A similar phrase, "crime of violence," is found in section 101(a)(43)(F) of the Act, 8 U.S.C. § 1101(a)(43)(F). Under that section, a crime of violence is an aggravated felony if the term of imprisonment is at least one year. As defined by 18 U.S.C. § 16, a crime of violence is an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or any other offense that is a felony and that, by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense. We note that the Attorney General declined to reference section 101(a)(43)(F) of the Act or 18 U.S.C. § 16, or the specific language thereof, in 8 C.F.R. § 212.7(d). Thus, we find that the statutory terms "violent or dangerous crimes" and "crime of violence" are not synonymous and the determination that a crime is a violent or dangerous crime under 8 C.F.R. § 212.7(d) is not dependent on it having been found to be a crime of violence under 18 U.S.C. § 16 or an aggravated felony under section 101(a)(43)(F) of the Act. *See* 67 Fed. Reg. 78675, 78677-78 (December 26, 2002).

Nevertheless, we will use the definition of a crime of violence found in 18 U.S.C. § 16 as guidance in determining whether a crime is a violent crime under 8 C.F.R. § 212.7(d), considering also other common meanings of the terms "violent" and "dangerous". The term "dangerous" is not defined specifically by 18 U.S.C. § 16 or any other relevant statutory provision. Thus, in general, we interpret the terms "violent" and "dangerous" in accordance with their plain or common meanings, and consistent with any rulings found in published precedent decisions addressing discretionary denials under the standard described in 8 C.F.R. § 212.7(d). Black's Law Dictionary, Seventh Edition (1999), defines violent as "of, relating to, or characterized by strong physical force" and dangerous as "likely to cause serious bodily harm." Decisions to deny waiver applications on the basis of discretion under 8 C.F.R. § 212.7(d) are made on a factual "case-by-case basis." 67 Fed. Reg. at 78677-78.

Here, the AAO finds that a conviction under [REDACTED] requires a defendant to willfully inflict upon a child any cruel or inhuman corporal punishment or an injury resulting in a

traumatic condition. In *People v. Cockburn*, 135 Cal. Rptr. 2d 807 (Cal. App. 2003), the California Court of Appeals stated that ‘traumatic condition’ has been described as a “condition of the body, such as a wound or external or internal injury, whether of a minor or a serious nature, caused by a physical force.” 135 Cal. Rptr. 2d at 814. The Court in *Cockburn* noted that ‘corporal punishment’ is that administered to the body of a child. *Id.* The infliction of corporal injury upon a child has been found in cases where a defendant choked and struck a 15-year-old female child on the side of her face with his fists, see *People v. Thomas*, 135 Cal. Rptr. 644 (Cal. App. 1977); slapped a child three times about the face and head, threw that child to the ground, and struck the child’s back with a boot, see *People v. Stewart*, 10 Cal. Rptr. 217 (1961); and where the defendant beat, kicked and stomped the victim’s head, sides and back numerous times, for about five minutes, see *People v. Cockburn*, 135 Cal. Rptr. 2d 807 (Cal. App. 2003). Consequently, a conviction under section 273d(a) of the California Penal code requires the willful infliction of corporal punishment or injury upon the body of a child.

Based upon the statutory elements of the offense of inflicting corporal injury on a child, the AAO finds that the applicant’s conviction under [REDACTED] is a violent crime that renders him subject to the heightened discretion standard of 8 C.F.R. § 212.7(d). Consequently, the heightened discretionary standards found in that regulation are applicable in this case.

Accordingly, the applicant must show that “extraordinary circumstances” warrant approval of the waiver. 8 C.F.R. § 212.7(d). Extraordinary circumstances may exist in cases involving national security or foreign policy considerations, or if the denial of the applicant’s admission would result in exceptional and extremely unusual hardship. *Id.* Finding no evidence of foreign policy, national security, or other extraordinary equities, the AAO will consider whether the applicant has “clearly demonstrate[d] that the denial of . . . admission as an immigrant would result in exceptional and extremely unusual hardship.” *Id.*

The exceptional and extremely unusual hardship standard is more restrictive than the extreme hardship standard. *Cortes-Castillo v. INS*, 997 F.2d 1199, 1204 (7th Cir. 1993). Since the applicant is subject to 8 C.F.R. § 212.7(d), he must meet the higher standard of exceptional and extremely unusual hardship. Therefore, the AAO will, at the outset, determine whether the applicant meets this standard.

In *Matter of Monreal-Aguinaga*, 23 I& N Dec. 56, 62 (BIA 2001), the Board determined that exceptional and extremely unusual hardship in cancellation of removal cases under section 240A(b) of the Act is hardship that “must be ‘substantially’ beyond the ordinary hardship that would be expected when a close family member leaves this country.” However, the applicant need not show that hardship would be unconscionable. *Id.* at 61.

The Board stated that in assessing exceptional and extremely unusual hardship, it would be useful to view the factors considered in determining extreme hardship. *Id.* at 63. In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board provided a list of factors it deemed relevant in determining whether an alien has established the lower standard of extreme hardship. 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 upon the qualifying relatives; 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 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 an exclusive list. *Id.*

In *Monreal-Aguinaga*, the Board provided additional examples of the hardship factors it deemed relevant for establishing exceptional and extremely unusual hardship:

[T]he ages, health, and circumstances of qualifying lawful permanent resident and United States citizen relatives. For example, an applicant who has elderly parents in this country who are solely dependent upon him for support might well have a strong case. Another strong applicant might have a qualifying child with very serious health issues, or compelling special needs in school. A lower standard of living or adverse country conditions in the country of return are factors to consider only insofar as they may affect a qualifying relative, but generally will be insufficient in themselves to support a finding of exceptional and extremely unusual hardship. As with extreme hardship, all hardship factors should be considered in the aggregate when assessing exceptional and extremely unusual hardship.

23 I&N Dec. at 63-4.

In the precedent decision issued the following year, *Matter of Andazola-Rivas*, the Board noted that, "the relative level of hardship a person might suffer cannot be considered entirely in a vacuum. It must necessarily be assessed, at least in part, by comparing it to the hardship others might face." 23 I&N Dec. 319, 323 (BIA 2002). The issue presented in *Andazola-Rivas* was whether the Immigration Judge correctly applied the exceptional and extremely unusual hardship standard in a cancellation of removal case when he concluded that such hardship to the respondent's minor children was demonstrated by evidence that they "would suffer hardship of an emotional, academic and financial nature," and would "face complete upheaval in their lives and hardship that could conceivably ruin their lives." *Id.* at 321 (internal quotations omitted). The Board viewed the evidence of hardship in the respondent's case and determined that the hardship presented by the respondent did not rise to the level of exceptional and extremely unusual. The Board noted:

While almost every case will present some particular hardship, the fact pattern presented here is, in fact, a common one, and the hardships the respondent has outlined are simply not substantially different from those that would normally be expected upon removal to a less developed country. Although the hardships presented here might have been adequate to meet the former "extreme hardship" standard for suspension of deportation, we find that they are not the types of hardship envisioned by Congress when it enacted the significantly higher "exceptional and extremely unusual hardship" standard.

23 I&N Dec. at 324.

However, the Board in *Matter of Gonzalez Recinas*, a precedent decision issued the same year as *Andazola-Rivas*, clarified that “the hardship standard is not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief.” 23 I&N Dec. 467, 470 (BIA 2002). The Board found that the hardship factors presented by the respondent cumulatively amounted to exceptional and extremely unusual hardship to her qualifying relatives. The Board noted that these factors included her heavy financial and familial burden, lack of support from her children’s father, her U.S. citizen children’s unfamiliarity with the Spanish language, lawful residence of her immediate family, and the concomitant lack of family in Mexico. 23 I&N Dec. at 472. The Board stated, “We consider this case to be on the outer limit of the narrow spectrum of cases in which the exceptional and extremely unusual hardship standard will be met.” *Id.* at 470.

An analysis under *Monreal-Aguinaga* and *Andazola-Rivas* is appropriate in this case. See *Gonzalez Recinas*, 23 I&N Dec. at 469 (“While any hardship case ultimately succeeds or fails on its own merits and on the particular facts presented, *Matter of Andazola* and *Matter of Monreal* are the starting points for any analysis of exceptional and extremely unusual hardship.”).

The record reflects that the applicant’s mother, [REDACTED] is a U.S. citizen. The applicant is a single parent and has three U.S. citizen children: an [REDACTED]. The applicant’s mother and children are qualifying members in these proceedings.

With regard to relocation, it is asserted on appeal that the applicant’s children have never been to Nicaragua, that they know very little about that country, and the applicant’s mother indicates she does not know if her grandchildren can survive there. Furthermore, the record evidence reflects that the children’s primary language is English, and that they understand minimal Spanish. Counsel asserts that the children’s psychological conditions impede a normal transition to that country, and that relocation would place the children at risk of developing long-term mental illness if forced to move to an unfamiliar country.

The AAO recognizes that the applicant’s three sons have resided in the United States their entire life and are integrated into their community. The Board and U.S. Courts decisions have found extreme hardship in cases where the language limitations of the children impeded an adequate transition to daily life in the applicant’s country of origin. In *Matter of Kao and Lin*, 23 I&N Dec. 45, 50 (BIA 2001), the BIA concluded that the language abilities of the respondent’s 15-year-old daughter were not sufficient for her to have an adequate transition to daily life in Taiwan. The girl had lived her entire life in the United States and was completely integrated into an American life style, and the BIA found that uprooting her at that stage in her education and her social development to survive in a Chinese-only environment would constitute extreme hardship. In *Ramos v. INS*, 695 F.2d 181, 186 (5<sup>th</sup> Cir. 1983), the Fifth Circuit Court of Appeals stated that “imposing on grade school age citizen children, who have lived their entire lives in the United States, the alternatives of . . . separation from both parents or removal to a country of a vastly different culture where they do not speak the language,” must be considered in determining whether “extreme hardship” has been shown. In

Page 9

*Prapavat v. INS*, 638 F. 2nd 87, 89 (9th Cir. 1980) the Ninth Circuit Court of Appeals found the BIA abused its discretion in concluding that extreme hardship had not been shown to the aliens' five-year-old citizen daughter, who was attending school, and would be uprooted from the country where she lived her entire life and taken to a land whose language and culture were foreign to her.

The applicant's mother asserts that her family's relocation to Nicaragua would be detrimental to her grandchildren, as they would not be able to function normally or receive psychological treatment. The applicant's mother states that she has a very close relationship with the applicant and his children. She further asserts that she is involved in her grandchildren's lives. The applicant's mother indicates that she relies on the love and emotional support she receives from the applicant and his grandchildren, and cannot live without the support of the applicant.

The record evidence supports a finding that the applicant's children have resided in the United States their entire lives, have family ties in the United States, are integrated into the U.S. school system, have received special psychological assistance for separation anxiety disorders, and has been diagnosed with Chronic Post Traumatic Stress Disorder as a result of the separation from his father and temporary placement in foster care.

With regards to financial hardship upon relocation, the applicant asserts that his family would suffer financially if they relocated to Nicaragua. A review of the record shows that the applicant has supported his household through gainful employment in the United States with the since September 2001. The applicant's business manager and supervisor submitted a letter in support of the applicant's appeal indicating that the applicant earns \$36.92 an hour as an ironworker in California. The AAO acknowledges that if the applicant's mother and three children relocated with him to Nicaragua, he would have to obtain employment in Nicaragua that would enable him to support a five member household.

The applicant and his mother assert that the family would experience psychological and emotional difficulties if they relocated to Nicaragua. The record shows that the applicant's children and mother were treated for anxiety and stress disorders in 2011 after learning of the applicant's potential bar to admission. Counsel states that, because of the children's psychological and educational challenges, it would be difficult for them academically to transition into a different country. As corroborating evidence, counsel submits psychological evaluations for the three children. The evaluations reflect that their fear of separation from the applicant has hindered their academic progress. In her reports, indicates that the children's previous placement in foster care, combined with the anxiety and disorders the children currently experience due to their fear of separation from the applicant, has affected their ability to perform normal daily activities. With regards to indicates that he is struggling academically and that he reported having difficulty concentrating due to his anxieties and fears of being separated from his father. mentions that the onset of symptoms coincides with the time that he was informed that his father would need to move to Nicaragua. indicates that is currently struggling in school, as he currently has a 2.34 grade point average. has reported symptoms of excessive anxiety and worry, nervousness, sad and depressed mood, crying spells and feelings of hopelessness. states in her evaluation of that he is experiencing a stress disorder related to his fear of being separated from the applicant. indicates that

remembers the period of time he spent in foster care and that he experiences intense psychological distress when he is reminded of the trauma he experienced while in foster care. states that the applicant's mother has been diagnosed with Major Depressive Disorder, Recurrent. The applicant's mother states that "I moved to California to help my son with my grandchildren. I get sad when I think about my son leaving and my grandchildren being placed in foster care again. I would want to keep my grandchildren with me but I can't afford to take care of them by myself." The applicant's mother further states that she has been residing in the United States for 33 years, all of her family members reside in the United States, and that she is accustomed to American culture. further indicates that the applicant's mother is traumatized by the prospect of having to relocate to Nicaragua.

The applicant's mother conveys that she would fear for her son and grandchildren's safety, and would live with constant worry if they relocate to Nicaragua. The 2013 U.S. Consular Country Specific Information Sheet for El Salvador conveys that:

The second poorest country in the Western Hemisphere, Nicaragua is a developing nation that faces many economic and political challenges. Crime, while less severe than neighboring countries to the north, continues to affect residents and visitors alike. While less than in neighboring countries, violent crime in Managua exists and petty street crimes are common. Gang activity exists, but also remains less prevalent than in neighboring Central American countries. Pick-pocketing and occasional armed robberies occur on crowded buses, at bus stops and in open markets.... Violence, robbery, assault and stabbings are mostly confined to poorer neighborhoods; however, in recent months acts of petty crime have taken place in more upscale neighborhoods.

Finally, the AAO notes that Nicaragua was designated for Temporary Protected Status (TPS) in January 1999, due to the devastation caused by Hurricane Mitch. See 76 Fed. Reg. 68493 (November 4, 2011). The TPS designation for Nicaragua has been extended through July 5, 2013, because: "[t]here continues to be a substantial, but temporary, disruption of living conditions in El Salvador resulting from a series of earthquakes in 2001, and Nicaragua remains unable, temporarily, to handle adequately the return of its nationals." *Id.*

In sum, the record shows that the applicant's three U.S. citizen children are integrated into the U.S. school system and have family ties in the United States. The applicant's three children are struggling academically due to their fear of relocation to Nicaragua and separation from the applicant. The three children also have special psychological needs. The applicant would have to find employment in Nicaragua to support a household of five, possibly causing financial hardship to his mother and children. The AAO finds similarities with the applicant's case and the facts set forth in *Gonzalez-Recinas*. In particular, the AAO notes the applicant's heavy financial contributions and familial burden, his U.S. citizen children's unfamiliarity with the culture and environment of the country of relocation, the children's special educational and psychological needs, the lawful residence of his immediate family, and the residence in the United States of the applicant's immediate family. The applicant and their children will be separated from their family ties of the applicant's sister and immediate family members if they move to Nicaragua. Additionally, the

record shows that relocation to Nicaragua will be difficult for the family, especially because the applicant's mother is concerned about their return to a country with political and safety issues. As Nicaragua has been designated for TPS, their relocation would likely result in a lower standard of living and adverse country conditions. Considering the weight of all of these factors in the aggregate, the AAO finds that relocation of the applicant's mother and children to Nicaragua would cause them exceptional and extremely unusual hardship.

The next issue to be addressed is whether the applicant's mother and his children would suffer exceptional and extremely unusual hardship if they remained in the United States separated from him.

The record shows that separation from the applicant would be especially hard on his children because they have been dealing with anxiety issues and psychological disorders ever since they found out the applicant might be removed to Nicaragua. As previously stated, the record evidence indicates that the applicant is a single parent with complete legal and physical custody of his three minor children. The applicant was granted custody of his minor sons by the [REDACTED] on June 10, 2010, as supported by a letter dated September 30, 2011 from [REDACTED] a Children's Social Worker with the [REDACTED]

In her letter, [REDACTED] states that there is an active Family Law Order restricting the children's mother's visitation rights to monitored visits due to "her non-compliance with court orders and departmental objectives." The record evidence further reflects the applicant's mother's multiple criminal convictions for burglary and theft. Therefore, the AAO recognizes that in the event of separation from the applicant, the applicant's mother would likely be unable to care for their children given the determinations of the [REDACTED] regarding her visitation rights. Furthermore, the applicant's mother has indicated that she is unable to provide daily care for her grandchildren as she presently resides in a senior community and her limited financial earnings are insufficient to support the children. Consequently, separation would likely result in the children being placed in foster care again. Additionally, the psychological evaluations reflect that the applicant's children's present psychological difficulties are in response to the threat of separation from their father and their prior history of being placed in foster care, separated from the applicant. The AAO acknowledges the hardship letters submitted by the applicant's children as well as the statements they made to [REDACTED] all of which reflect a strong attachment to their father.

The applicant's mother asserts that if the applicant were to be removed to Nicaragua, their children would lose a father who has mentally, emotionally, and physically supported his children. She asserts that the children love their father, and that the applicant teaches his children "right from wrong and encourages them to learn from his mistakes." Further, the record reflects that the applicant's departure would cause emotional hardship for his mother, who "stands by him with her love and support" and is a "hard-working, kind, respectful and courageous man." The AAO acknowledges that the separation of the applicant from his qualifying family members "would deprive his family of various forms of non-economic familial support and that it would disrupt family unity." *United States v. Arrieta*, 224 F.3d 1076, 1082 (9<sup>th</sup> Cir. 2000). In *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9<sup>th</sup> Cir. 1998), the Ninth Circuit Court of Appeals, referring to the separation of an alien from qualifying relatives, 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 will therefore give consideration to the emotional hardship that the applicant’s qualifying relatives would suffer as a result of their separation from the applicant.

The record also demonstrates that the applicant’s family members would suffer financially if they were separated from the applicant. The applicant’s mother asserts that the applicant is the sole financial provider for the family. She contends that she cannot provide economically for their grandchildren because her income is insufficient and she is currently residing in a senior community. The record shows that the applicant has been employed as a [REDACTED] since September 2001 and earns \$36.92 an hour. Therefore, he has a history of stable, long-term employment in the United States. The applicant has also demonstrated that he is the financial head of his household, earning a sufficient income to support his three children. The AAO therefore finds that the applicant’s removal would leave his children without their principal source of financial support, causing them significant economic hardship.

Considering the weight of all of these factors in the aggregate, the AAO finds that the hardships related to separation presented in this case rise to the level of exceptional and extremely unusual hardship. While the emotional and financial hardships the applicant’s family members would suffer if separated from the applicant are extreme, the AAO acknowledges that they are, on the surface, among the more common hardships presented in most waiver cases. The determining factors that raise this case to one presenting exceptional and extremely unusual hardship are that: the applicant’s children would be faced with the prospect of permanent separation from the applicant; the applicant’s children would likely return to foster care, as the children’s mother is only allowed to interact with her children in monitored visits given her criminal history and noncompliance with court orders and the objectives of the [REDACTED] the psychological impact separation would have on three already vulnerable minor children; and the loss of the parental figure who provides financial and emotional support to her three children. Therefore, the AAO finds that the applicant has established that his family members would experience exceptional and extremely unusual hardship if his waiver application is denied.

Additionally, while 8 C.F.R. § 212.7(d) permits us to deny the waiver as a discretionary matter based on the gravity of the applicant’s offense, we note that, in general, a traditional discretionary analysis requires that the AAO “balance 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.” *Matter of Mendez-Morales*, 21 I&N Dec. 296, 300 (BIA 1996)(Citations omitted). The primary unfavorable factor in this case is the nature and seriousness of the applicant’s convictions, crimes of significant gravity. Other unfavorable factors include any periods of unlawful presence and employment. On the other hand, the favorable factors presented by the applicant are the exceptional and extremely unusual hardship to his U.S. citizen mother and children, who depend on him for emotional and financial support; the applicant’s stable work history in the United States; the lack of any other arrests or convictions since his last conviction in 2007; the evidence demonstrating the applicant’s sincere efforts at rehabilitation to secure physical custody of his

children; the evidence demonstrating rehabilitation; and the evidence about the applicant's community service and volunteerism.

With regards to rehabilitation, the record includes the letter dated September 20, 2011 by [REDACTED] the children's Social Worker. In her letter, [REDACTED] states that the applicant has been found in compliance with the orders of the family court and he has actively participated in all of the minor's programs and interventions. [REDACTED] indicates that the applicant has proved to the [REDACTED]; that he was able to meet the needs of his children. She further indicates that the applicant appeared to be providing a consistent, loving, nurturing home environment for his sons to thrive. [REDACTED] asserts that the applicant completed group and individual therapy sessions dealing with domestic violence and anger management. The declarations in the record from the applicant's mother, sister, and children further corroborate the assertions [REDACTED] made about the applicant. Additionally, the applicant's mother states in her declaration that the applicant has become a more conscientious and responsible person who has learned from his mistakes; and the granting of physical and legal custody of his three children supports these assertions.

The record indicates that the applicant is involved in school and community service. In a letter dated October 11, 2011, [REDACTED] an Administrator at the [REDACTED] states that the applicant is an attentive father who teaches his children practical skills and life lessons. She states that the applicant is supportive of the school's efforts of providing a good education. [REDACTED] indicates that the applicant has been known to make small repairs on school grounds and he assisted in the school's Holidays celebration by dressing as Santa Claus. She indicates that the applicant attends school functions and meetings. Importantly, [REDACTED] mentions that the love and caring he shows his children is evident and that he is a wonderful father.

Finally, the record includes a letter dated October 15, 2011, by [REDACTED] an educator in the Theology Department at [REDACTED]. [REDACTED] mentions that he met the applicant early in his work and was impressed with the applicant's desire to redirect his life. [REDACTED] firmly believes that the applicant is sincere in his efforts to improve his life both personally and professionally. He indicates that he has observed the applicant learn from his past mistakes and continue with renewed effort to avoid repeating those mistakes. These letters and statements are favorable indicators of efforts at rehabilitation which, when evaluated in the aggregate, demonstrate that the applicant has rehabilitated.

Here, the AAO has weighed the severity of the applicant's criminal convictions, his rehabilitation, his 27 years of residence in the United States, and the other favorable facts in the record, including his U.S. citizen mother, his three U.S. citizen children, and his history of steady employment, and finds that the applicant merits a favorable exercise of discretion. The AAO recognizes that it is favorably exercising discretion in a case presenting serious and severe criminal conduct. However, the AAO finds that the applicant has been rehabilitated. The applicant is now an active and productive member of his church and community. He obtained legal and physical custody of his children in 2010, and the evidence in the record indicates that the applicant takes care of and financially provides for his U.S. citizen children. Given these factors, coupled with the hardship that

would be experienced by his U.S. citizen mother and children upon his removal, we find that the positive factors outweigh the negative factors in this case.

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, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

**ORDER:** The appeal is sustained.