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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

File: [redacted] Office: MIAMI, FLORIDA Date: APR 29 2003

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)

PUBLIC COPY

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Acting District Director, Miami, Florida, and a subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted and the order dismissing the appeal will be affirmed. The application will be denied.

The applicant is a native and citizen of Nicaragua who was found by the acting district director 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 daughter of lawful permanent resident parents and the mother of a United States citizen child. She seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to adjust her status under the Nicaraguan Adjustment and Central American Relief Act, Public Law 105-100 (NACARA).

The acting district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative and did not warrant a favorable exercise of discretion to grant her request due to the seriousness associated with the crime for which she was convicted. The acting director denied that application accordingly and the AAO affirmed that decision on appeal.

On appeal, counsel asserted that the acting district director did not consider all of the factors presented. Counsel asserted that the applicant is cognizant of the serious nature of her crime and is very remorseful, however, she has only one conviction and has had no other problems with the law. Counsel also indicated that the applicant's former spouse has stated that he is planning to remarry the applicant because he still loves her and cannot bear to be separated from the applicant and their daughter.

On motion, counsel asserts that the AAO did not take into account the level of backwardness, absolute poverty, and internal country conditions in Nicaragua. Moreover, counsel asserts that the applicant has hired a criminal defense attorney to explore the option of reopening her conviction in the Eleventh Judicial Court.

The record reflects that the applicant was convicted on January 30, 1996 in the Eleventh Judicial Circuit Court in and for Dade County, Florida, of Aggravated Child Abuse. According to the police report, the applicant admitted placing her nine-year-old step-daughter's hands in hot water causing first and second degree burns.

Under the statutory definition of the term "conviction," no effect is to be given in immigration proceedings to a state action which purports to expunge, dismiss, cancel, vacate, discharge or otherwise remove a guilty plea or other record of guilt or conviction by operation of a state rehabilitative statute. Once an alien is subject to a "conviction" as that term is defined in section 101(a)(48)(A) of the Act, the alien remains convicted for

immigration purposes notwithstanding a subsequent state action purporting to erase the original determination of guilt through a rehabilitative procedure.

With regard to counsel's assertion regarding country conditions in Nicaragua, it is emphasized that there are no laws that require the applicant's parents or child to leave the United States and live abroad. Furthermore, hardship to the applicant herself is not a consideration in section 212(h) proceedings. A finding of ineligibility under section 212(h) does not preclude an applicant from filing an application for asylum under section 208 of the Act, in accordance with the instructions contained in 8 C.F.R. Part 208.

Section 212(a) of the Act states:

> CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.- Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:
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> * * *
>
> (2) CRIMINAL AND RELATED GROUNDS.-
>
> (A) CONVICTION OF CERTAIN CRIMES.-
>
> (i) IN GENERAL.- Except as provided in clause (ii), an alien convicted of, or who admits having committed, or who admits committing such 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 states:

> The Attorney General may, in his discretion, waive application of subparagraphs (A)(i)(I),...if-
>
> (1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that-
>
> (i)...the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
>
> (ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated; or

(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 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; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

No waiver shall be provided under this subsection in the case of an alien who has been convicted of (or who has admitted committing acts that constitute) murder or criminal acts involving torture, or an attempt or conspiracy to commit murder or a criminal act involving torture. No waiver shall be granted under this subsection in the case of an alien who has previously been admitted to the United States as an alien lawfully admitted for permanent residence if either since the date of such admission the alien has been convicted of an aggravated felony or the alien has not lawfully resided continuously in the United States for a period of not less than 7 years immediately preceding the date of initiation of proceedings to remove the alien from the United States. No court shall have jurisdiction to review a decision of the Attorney General to grant or deny a waiver under this subsection.

Here, fewer than 15 years have elapsed since the applicant committed the violation for which she was found inadmissible. Therefore, she is ineligible for the waiver provided by section 212(h)(1)(A) of the Act.

Section 212(h)(1)(B) of the Act provides that a waiver resulting from inadmissibility under section 212(a)(2)(A)(i)(I) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. The key term in the provision is "extreme." Therefore, only in cases of great actual or prospective injury to the qualifying relative(s) will the bar be removed. Common results of the bar, such as separation or financial difficulties, in themselves, are insufficient to warrant approval of an application unless combined with much more extreme impacts. *Matter of Ngai*, 19 I&N Dec. 245 (Comm. 1984). *See also Hassan v. INS*, 927 F.2d 465 (9th Cir. 1991). "Extreme hardship" to an alien herself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

On appeal, counsel submitted documentation including affidavits from the applicant's parents, evidence of their lawful permanent residence in the United States, and medical records and a psychological evaluation of the applicant's mother. Counsel asserts that the documentation submitted establishes that the applicant's parents will suffer extreme emotional and financial hardship if the applicant were removed to Nicaragua.

The applicant's father and mother are 52 and 49 years-of-age, respectively. The mother states that she has back problems due to a car accident four years ago in which she damaged her 3rd and 4th lumbar discs, is under medical care for degenerative arthritis in her left knee, has experienced other physical illnesses due to severe mental stress, and has been suffering from terrible emotional pain due to her daughter's immigration problems.

The applicant's father states that he suffers from a dangerous combination of illnesses including hypertension, diabetes, high cholesterol, and heart disease. He states that his medical situation is precarious and that his worry over his daughter's immigration situation increases his stress. The father also indicates that he is the family's main source of income and that if he has to support his daughter and grand-daughter in Nicaragua, it would put a tremendous burden on the family's financial situation. Both of the applicant's parents state that they love their daughter very much and assert that she is extremely remorseful and feels ashamed of her crime.

While the medical problems suffered by the applicant's parents are unfortunate, there is no evidence contained in the record that either of them suffers from a significant condition of health for which treatment is unavailable in Nicaragua. In addition, there is no evidence contained in the record to support a claim that the applicant's daughter would suffer extreme hardship if the applicant were removed from the United States.

In *Perez v. INS*, 96 F.3d 390 (9th Cir. 1996), the court stated that "extreme hardship" is hardship that is unusual or beyond that which would normally be expected upon deportation. The common results of deportation are insufficient to prove extreme hardship.

The 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.

A review of the documentation in the record, when considered in its totality, fails to establish the existence of hardship, over and above the normal social and economic disruptions of separation, that reaches the level of extreme as envisioned by Congress if the applicant is not allowed to remain in the United States. It is concluded that the applicant has not established the qualifying degree of hardship in this matter.

The grant or denial of the above waiver does not turn only on the issue of the meaning of "extreme hardship." It also hinges on the

discretion of the Attorney General and pursuant to such terms, conditions, and procedures as he may by regulations prescribe. Since the applicant has failed to establish the existence of extreme hardship, no purpose would be served in discussing a favorable exercise of discretion at this time.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of establishing that the application merits approval remains entirely with the applicant. *Matter of Ngai, supra*. Here, the applicant has not met that burden. Accordingly, the order dismissing the appeal will be affirmed. The application will be denied.

ORDER: The order of the AAO dated May 13, 2002 dismissing the appeal is affirmed. The application is denied.