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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: [redacted] Office: Miami Date: AUG 13 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)

ON BEHALF OF APPLICANT:

[redacted]

PUBLIC COPY

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

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 mother of two U.S. citizen children, and she is applying for adjustment of status under the Nicaraguan Adjustment and Central American Relief Act, Pub.L. 105-100 (NACARA). The applicant seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon a qualifying relative. The district director also determined that the applicant did not warrant a favorable exercise of discretion due to the recency, severity, and violence of the crime and denied the application accordingly. The AAO affirmed that decision on appeal.

On motion, counsel states that the relocation of the applicant to Nicaragua would impose an extreme hardship on her two children due to country conditions that are hostile to children in Nicaragua. Counsel submits a Department of State report on country conditions in Nicaragua.

According to statements in the record, the applicant has been separated from [redacted] her husband and the father of her two children, since 1996, but they have not divorced. In a sworn affidavit given on March 23, 2001, the applicant states, "Although we are separated, I have no wish to separate him from his children, and they need him as much." Tax records contained in the file indicate that the applicant claimed both daughters as dependents in 1997, but only one in 1998. No further tax records are available. The record does not clearly establish with whom the children are living or the extent of the father's participation in the children's lives.

The district director stated in his decision that if the applicant were denied permanent residence it would not seem unlikely that the children's father would be able to care for them. This factor has not been overcome on appeal or on motion.

Pursuant to 8 C.F.R. § 103.5(a)(2), a motion to reopen must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence.

Pursuant to 8 C.F.R. § 103.5(a)(3), a motion to reconsider must state the reasons for reconsideration; and be supported by any pertinent precedent decisions.

Pursuant to 8 C.F.R. § 103.5(a)(4), a motion that does not meet applicable requirements shall be dismissed.

The issues in this matter were thoroughly discussed by the director and the AAO in their prior decisions. Since no new issues have been presented for consideration, the motion will be dismissed.

ORDER: The motion is dismissed. The order of August 21, 2001, dismissing the appeal is affirmed.