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U.S. Department of Justice
Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
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prevent clearly unwarranted
invasion of personal privacy**

FILE:  Office: Miami Date: **FEB 28 2003**

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).

IN BEHALF OF APPLICANT: 

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 Service 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.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

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 seeks adjustment of status under the Nicaraguan and Central American Relief Act (NACARA), Pub.L. 105-100. He 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 and denied the application accordingly.

On appeal, counsel states that the applicant has two U.S. citizen children to whom he regularly gives financial and emotional support. Counsel submits court record regarding the applicant's payment of child support since July 1999 to Maria E. Mena, nee Picardo.

The record reflects the following:

(1) On September 4, 1984, the applicant was convicted of prostitution (a misdemeanor) committed in June 1984. He was fined and adjudication of guilt was withheld.

(2) On February 3, 1992, the applicant was convicted of three counts of a Lewd and Lascivious Act upon a Child (a felony), involving his 9 year old step-daughter, committed between June and October 1991. Adjudication of guilt was withheld, and he was placed on five years probation.

Section 212(a)(2) of the Act states in pertinent part, that:

(A)(i) Except as provided in clause (ii), any 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 part, that:-The Attorney General may, in his discretion, waive the application of subparagraph (A)(i)(I), ...or subsection (a)(2) and subparagraph

(A) (i) (II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana 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 for adjustment of status....

Here, fewer than 15 years have elapsed since the applicant committed the last violation in 1991. Therefore, the applicant is ineligible for the waiver provided by section 212(h) (1) (A) of the Act.

Nothing could be clearer than Congress' desire in recent years to limit, rather than extend, the relief available to aliens who have committed crimes involving moral turpitude. In addition to the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub L. 104-208, 110 Stat. 3009, this intent was recently seen in the provisions of the Antiterrorism and Effective Death Penalty Act of 1996, Pub.L. No. 104-132, 110 Stat. 1214, which relates to criminal aliens. Congress has almost unfettered power to decide which aliens may come to and remain in this country. This power has been recognized repeatedly by the Supreme Court. See *Fiallo v. Bell*, 430 U.S. 787 (1977); *Reno v. Flores*, 507 U.S. 292 (1993); *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). See also *Matter of Yeung*, 21 I&N Dec. 610, 612 (BIA 1997).

Section 212(h) (1) (B) of the Act provides that a waiver of the bar to admission 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). "Extreme hardship" to an alien himself cannot be considered in determining eligibility for a section 212(h) waiver of inadmissibility. *Matter of Shaughnessy*, 12 I&N Dec. 810 (BIA 1968).

In *Matter of Goldeshtein*, 20 I&N Dec. 382 (BIA 1991), *rev'd on other grounds*, 8 F.3d 645 (9th Cir. 1993), the Board of Immigration Appeals (the Board) held that an application for discretionary relief, including a waiver of inadmissibility under section 212(h) of the Act, may be denied in the exercise of discretion without express rulings on the question of statutory eligibility. In that matter, the immigration judge found that there may be extreme hardship in that particular case but denied the waiver request as a matter of discretion because the applicant's offense was "very serious." See *INS v. Rios-Pineda*, 471 U.S. 444, 449 (1985); *INS v. Bagamasbad*, 429 U.S. 24, 25 (1976).

Perpetrating a Lewd and Lascivious Act on a nine year old child on three occasions is a very serious offense. Following *Matter of Goldeshtein*, the district director's decision will be affirmed and the appeal will be dismissed as a matter of discretion without an express discussion of the question of statutory eligibility. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.