U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

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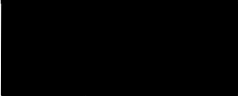
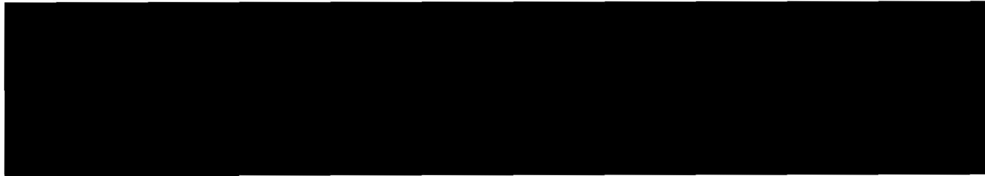


FILE: Office: TEGUCIGALPA, HONDURAS Date: MAR 20 2008

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under section 212(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(i)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Officer-in-Charge, Tegucigalpa, Honduras, and is now before the Administrative Appeals Office (AAO) 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)(6)(C)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for having procured admission into the United States by fraud or willful misrepresentation. The applicant is the daughter of a Lawful Permanent Resident and she is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of inadmissibility pursuant to section 212(i) of the Act, 8 U.S.C. § 1182(i).

The officer-in-charge concluded that the applicant had failed to establish extreme hardship would be imposed on a qualifying relative. The application was denied accordingly.

On appeal, counsel states that Citizenship and Immigration Services ("CIS") committed error in determining the applicant had misrepresented a material fact at her immigrant visa interview in April 1996. Counsel asserts that the alleged misrepresentation was merely the result of a mistranslation. Second, counsel asserts that CIS abused its discretion by failing to thoroughly analyze the facts and evidence in the case, including evidence of extreme physical and emotional hardship to the applicant's mother. Specifically, counsel states that records documenting the qualifying relative's medical condition and declarations submitted by the applicant's mother and sisters were not given adequate consideration by CIS.

Section 212(a)(6)(C) of the Act provides, in pertinent part:

> (i) Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

Section 212(i) of the Act provides:

> **(1)** The [Secretary] may, in the discretion of the [Secretary], waive the application of clause (i) of subsection (a)(6)(C) in the case of an alien who is the spouse, son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such an alien.

Counsel asserts that the applicant did not willfully misrepresent a material fact by stating she had never been arrested. Counsel maintains that because of the translation of the word "arrest" into Spanish, she understood the question to apply only to an arrest by the police and not by immigration officials. Although the 1999 denial of the applicant's first waiver application refers to the applicant's failure to disclose any prior arrests, the decision to deny the waiver in the present case is not based on this statement. Rather, it is based on the applicant's failure to disclose her prior illegal entry into the United States at the time she applied for a nonimmigrant visa. The officer-in-charge correctly determined that the applicant's failure to disclose her

1988 illegal entry to the United States when applying for the visa constituted a material misrepresentation. The applicant was granted the visa and used it to travel to the United States several times. *See I-601 Application, listing entries as a visitor from 1993 to 1995.* Counsel does not deny that the applicant willfully failed to disclose her illegal entry to the United States. The failure to disclose her prior illegal entry constituted a material misrepresentation, as it cut off a line of questioning and the visa likely would not have been issued had the consular officer been aware of this fact. The applicant is therefore inadmissible under section 212(a)(6)(C)(i) of the Act.

Section 212(i) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(6)(C)(i) of the Act is dependent first upon a showing that the bar imposes an extreme hardship on a qualifying family member. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

In *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560 (BIA 1999), the Board of Immigration Appeals (BIA) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship. These factors included 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.

U.S. court decisions have additionally held that the common results of deportation or exclusion are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991). For example, in *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996), the BIA held that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship. In addition, in *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996), the court held that the common results of deportation are insufficient to prove extreme hardship and defined "extreme hardship" as hardship that was unusual or beyond that which would normally be expected upon deportation.

In the present case, the record reflects that the applicant is a forty-eight year-old native and citizen of Nicaragua who has resided there since 1988, when she returned after illegally entering the United States. The applicant's mother, a lawful permanent resident since 1987, is seventy-four years old and suffers from various ailments, including hypertension, osteoporosis, osteoarthritis, arterial disease and vertigo. The applicant has five sisters who reside in the United States, and the applicant's mother resides with one of them in Los Angeles. The applicant's mother travels frequently to Nicaragua and receives medical care there, and during these visits the applicant cares for her.

Counsel asserts that the applicant's mother would suffer extreme hardship if the applicant were not permitted to enter the United States. As evidence of this hardship, counsel submitted affidavits from the applicant, her mother, and the applicant's five sisters residing in the United States, as well as medical records. The affidavits indicate that the applicant's mother is elderly and is receiving treatment for various medical

conditions. The affidavits all state that she needs the applicant here in the United States because her other daughters work and have families and do not have the time to take care of her. The evidence on the record indicates, however, that the applicant's mother is living with one of her daughters in Los Angeles.[1] The documentation submitted also suggests that at least one of the daughters, , is actively involved in her mother's medical care. A report from the Glendale MRI Institute assessing the applicant's mother's bone density measurements contains handwritten notations stating that a prescription had been called in to the pharmacy and "[patient's] daughter notified[;] will comply." *See Exhibit G.* Further, two other daughters live in the Los Angeles area and another lives in Miami, Florida. It appears that the applicant's mother has several family members in the United States who are willing and able to care for her, and it would therefore not constitute extreme hardship for her if the applicant were denied admission to the United States.

Counsel additionally asserts that the applicant's mother would suffer emotional hardship if her daughter were not permitted to enter the United States. Affidavits from , and state that the applicant's mother is suffering from depression because she is separated from the applicant. Aside from these statements, the only documentation in the record indicating that the applicant suffers from this condition is a two-sentence letter from a doctor in Nicaragua stating that the applicant suffers from recurring depression and hypertension. It provides no more details about her condition, nor does it indicate that she is receiving any treatment for her depression. *See undated letter from , Exhibit F.* Further, a letter from the applicant's doctor in Glendale, California states that she suffers from osteoarthritis, osteoporosis, peripheral arterial disease and vertigo, but does not mention any diagnosis of depression. *See letter from dated October 11, 2005, Exhibit G.* The evidence does not establish that any emotional hardship the applicant's mother is experiencing is more serious than the type of hardship a family member would normally suffer when faced with the prospect of the continued separation from her daughter. Although the depth of her concern over the applicant's immigration status is not in question, a waiver of inadmissibility is only available where the resulting hardship would be unusual or beyond that which would normally be expected upon deportation or exclusion. Further, the applicant, who is forty-eight years old, has resided apart from her mother and has only visited the United States temporarily since voluntarily returning to Nicaragua after her illegal entry in 1988. In addition, her presence in Nicaragua has been of benefit to her mother when she travels there for medical care. *See affidavit of , dated July 6, 2004, Exhibit A.* The prospect of separation always results in considerable hardship to individuals and families. But in specifically limiting the availability of a waiver of inadmissibility to cases of "*extreme* hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship, and thus the familial and emotional bonds, exists.

Counsel made no claim that the applicant's mother would experience hardship if she were to join her in Nicaragua, so the AAO cannot make a finding of extreme hardship if her mother moved there.

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[1] It is not clear from the record with which daughter the applicant's mother resides. The waiver application and a declaration from indicate that both and the applicant's mother reside at Los Angeles, California. A declaration from indicates that the applicant's mother resides with her at Los Angeles, California.

Further, even if such a claim were made, evidence in the record indicates that the applicant's mother travels frequently to Nicaragua and receives medical care there, which suggests she would not suffer extreme hardship if she were to join the applicant in Nicaragua.

A review of the documentation in the record, when considered in its totality, reflects that the applicant has failed to show that her lawful permanent resident mother would suffer extreme hardship if she were denied admission to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether the applicant merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.