



U.S. Citizenship
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FILE:

[REDACTED]

Office: MIAMI, FL

Date: DEC 16 2005

IN RE:

[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:

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Miami, Florida and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible under section 212(a)(2)(D)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(D)(iii) and the relevant waiver application is therefore moot.

The record reflects that the applicant is a native and citizen of the Dominican Republic who was found to be inadmissible to the United States pursuant to section 212(a)(2)(D)(iii) of the Act for having been convicted of the crimes of possession of gambling records and promotion of gambling. The record indicates that the applicant has a lawful permanent resident spouse. The applicant seeks a waiver of inadmissibility in order to reside with her family in the United States.

The district director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated June 22, 2004.

On appeal, counsel asserts that the I-601 waiver should have been granted and that the applicant's spouse has health problems which would result in extreme hardship were the applicant to be removed from the United States. *Form I-290B*, dated July 22, 2004.

The record includes, but is not limited to, counsel's brief, information on the Dominican Republic and medical records for the applicant's spouse. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

(D) Prostitution and commercialized vice. -Any alien who-

(i) is coming to the United States solely, principally, or incidentally to engage in prostitution, or has engaged in prostitution within 10 years of the date of application for a visa, admission, or adjustment of status,

(ii) directly or indirectly procures or attempts to procure, or (within 10 years of the date of application for a visa, admission, or adjustment of status) procured or attempted to procure or to import, prostitutes or persons for the purpose of prostitution, or receives or (within such 10- year period) received, in whole or in part, the proceeds of prostitution, or

(iii) is coming to the United States to engage in any other unlawful commercialized vice, whether or not related to prostitution, is inadmissible.

The AAO notes that sections 212(a)(2)(D)(i) and (ii) of the Act include provisions which state that an alien who has engaged in a relevant prostitution-related crime within ten years of the date of application for adjustment of status is inadmissible. However, section 212(a)(2)(D)(iii) of the Act does not include the "within ten years" language, rather it solely finds inadmissibility when an alien is "coming" (i.e. seeking admission through adjustment of status) to the United States to engage in unlawful commercialized vice.

The record indicates that the applicant plead guilty on January 6, 1995 to possession of gambling records in the first degree and promoting gambling in the first degree, plead guilty on June 6, 1996 to possession of gambling records in the first degree and promoting gambling in the second degree and plead guilty on August 22, 1996 to possession of gambling records in the first degree and two counts of promoting gambling in the first degree.

Therefore, the applicant's convictions for crimes involving unlawful commercialized vice are over nine years old. There is no indication in the record that the applicant is currently involved in unlawful commercialized vice and is coming to the United States to engage in unlawful commercialized vice as proscribed by the statute.

Based on the record, the AAO finds that the applicant is not coming to the United States to engage in unlawful commercialized vice and is not inadmissible under section 212(a)(2)(D)(iii) of the Act. The waiver filed pursuant to section 212(h) of the Act is therefore moot.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant is not required to file the waiver. Accordingly, the appeal will be dismissed as moot.

ORDER: The appeal is dismissed as moot.