

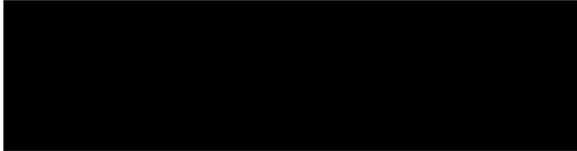
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FILE:



Office: HARLINGEN, TEXAS

Date: JUL 17 2007

IN RE:



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:



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, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(D) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(D), as an alien convicted of prostitution. The record indicates that the applicant's mother is a lawful permanent resident. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with his lawful permanent resident mother and United States citizen child.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's mother and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director Decision*, dated April 19, 2004.

On appeal, the applicant, through counsel, asserts that the denial of the applicant's waiver was in error. *Form I-290B*, filed May 18, 2004. Counsel claims that the applicant's lawful permanent resident mother and United States citizen child will suffer extreme hardship if the applicant is removed from the United States. *Id.*

The record includes, but is not limited to, a letter from the applicant, affidavits from the applicant's parents, letters from [REDACTED], and [REDACTED], numerous letters of reference, and court dispositions from the Cameron County, County Court. The entire record was reviewed and considered in arriving at a decision on the appeal.

On November 30, 2001, the applicant was arrested for soliciting a prostitute. On August 12, 2002, the applicant pled guilty to prostitution; however, the Cameron County judge deferred a finding of guilt for a period of 6 months.

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

(D) *Prostitution and commercialized vice.*—Any alien who—

- (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

...

is inadmissible.

Section 212(h) of the Act provides, in pertinent part, that:

- (h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (D)...or subsection (a)(2) if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that—

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection or 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 established to the satisfaction of the [Secretary] 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...

(2) the [Secretary], 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.

The applicant is inadmissible under section 212(a)(2)(D) of the Act for attempting to procure a prostitute; however, he is eligible for a waiver under section 212(h)(1)(A). On April 19, 2004, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his lawful permanent resident mother, under section 212(h)(1)(B). The AAO finds that the District Director erred in basing his decision on section 212(h)(1)(B) of the Act and failing to consider the eligibility of the applicant for waiver under section 212(h)(1)(A). The record reflects that the applicant has not been convicted of any additional crimes since his last conviction in 2002. There are no convictions on the applicant's record and the record of proceedings does not establish that the admission of the applicant to the United States would be "contrary to the national welfare, safety, or security of the United States." Through the applicant's numerous positive character references, he has demonstrated his rehabilitation. The AAO notes that while the applicant participated in a Sex Offenders Treatment Program, he was remorseful for his crime, and he "is not considered a risk as an offender...[He] was terminated from the program with good recommendations and is not likely to commit the same crime again." *Letter from* [REDACTED] *MA, LMFT, RSOTP.* [REDACTED] states the applicant "is a very nice person. [He has] personal knowledge that he has never been in trouble and or any problems." *Affidavit from* [REDACTED] dated May 15, 2004. [REDACTED] states that he has

known the applicant "for about four years. He is a very nice, quiet person and has not had problems." *Affidavit from* [REDACTED] dated May 13, 2004. [REDACTED] states that he has "been acquainted with [the applicant] for five years, [he] was [the applicant's] supervisor when [they] worked [together]...He is dependable, hardworking, and would make a good citizen of the United States." *Affidavit of* [REDACTED] dated May 13, 2004. [REDACTED] states he has known the applicant for three years and in that time, [REDACTED] has "known [the applicant] to be a very reliable individual." *Letter from* [REDACTED] dated May 13, 2004. [REDACTED] states she has known the applicant for ten years and she has "never heard that [the applicant] has had any trouble with the law." *Affidavit from* [REDACTED] dated May 15, 2004.

The record reflects that the applicant meets the requirements for waiver of his grounds of inadmissibility under section 212(h)(1)(A) of the Act. Further, the AAO notes that the applicant's lawful permanent resident parents and United States citizen son would suffer emotional and financial hardship as a result of their separation from the applicant. *Affidavit from* [REDACTED], the applicant's mother, dated May 15, 2004 ("[The applicant] takes care of me by taking me to see the doctors and to get medicines. He also takes care of his son. I need [the applicant] because he is the one that drives me to work and to the doctors. I am diabetic and have high blood pressure."); *Letter from* [REDACTED], Director of Pharmacy Services, South Texas Health Care System, dated May 13, 2004 ("[The applicant] comes to South Texas Health Care System...to pick up his mother's ([REDACTED]) medications on a regular basis."); *Letter from* [REDACTED] RHIT, South Texas Health Care System, dated May 13, 2004 ([REDACTED] has a chronic condition for which she is seen here."); *Affidavit from* [REDACTED], the applicant's father, dated May 17, 2004 ("I am living with [the applicant] due to my medical condition...I do not have any government assistance [sic]...Thanks to [the applicant] that provides for me he is the primary caregiver for me and my wife."); *Letter from* [REDACTED] RHIT, *supra* ([REDACTED] is also a patient at this facility. [The applicant], his son, is the primary caregiver for his father [REDACTED]. [REDACTED] also has a chronic condition for which he has been seen at our clinic."); *Letter from* [REDACTED], University Eye Center ([REDACTED] [REDACTED] [has] Macular Degeneration and Cataract to both eyes...I feel like patient would need for his son to continue taking care of him due to poor vision.").

The favorable factors presented by the applicant are the extreme hardship to his lawful permanent resident parents and United States citizen son, who depend on him for emotional and financial support; the applicant's stable work history in the United States since 1996; the applicant's history of paying his federal income taxes since 1996; and the numerous positive character references.

The unfavorable factors presented in the application are the applicant's convictions for prostitution in 2002 and periods of unauthorized presence. The AAO notes that the applicant has not been charged with any crimes since his last conviction.

While the AAO does not condone his actions, the applicant has established that the favorable factors in his application outweigh the unfavorable factors. The district director's denial of the I-601 application was thus improper.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.