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**U.S. Citizenship
and Immigration
Services**

H2

FILE:

Office: ATLANTA, GEORGIA

Date: **MAY 15 2007**

IN RE:

PETITION: 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 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.

A handwritten signature in cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant is a native and citizen of Korea 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 spouse of a U.S. citizen and now seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that she may reside in the United States with her spouse.

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 for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director.*

On appeal, counsel contends that Citizenship and Immigration Services (CIS) erred as a matter of law in finding that the applicant failed to meet the burden of establishing extreme hardship to her qualifying relative necessary for a waiver under 212(h) of the Act. *Form I-290B.*

In support of these assertions, counsel submits a brief. The record also includes, but is not limited to, a letter from M.D., Doctors Medical Center, dated January 22, 2005; a statement from the parents of the applicant's spouse, dated February 2, 2005; a statement from the applicant's spouse, dated January 31, 2005; a statement from the applicant, dated January 31, 2005; criminal records and court documents for the applicant; a Korean family census register for the applicant; bank statements for the applicant and her spouse; an employment letter for the applicant's spouse; and tax statements for the applicant and her spouse. The entire record was considered in rendering a decision on the appeal.

The record reflects that on December 18, 2001 the applicant was convicted of Disorderly Conduct in New York for which she received a sentence of two days community service. *Certificate of Disposition, Criminal Court of the City of New York, County of Queens*, dated January 7, 2003. On September 17, 2002 the applicant was convicted of two separate counts of prostitution in New York for which she received two separate sentences of three days community service. *Id.* On November 20, 2002 the applicant was convicted of an amended charge of loitering in New Jersey for which she had to pay fines. *Transcript of Docket, Atlantic City Municipal Court, Atlantic City, New Jersey*, dated January 3, 2003.

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

(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.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (D) . . . of subsection (a)(2) . . . if –

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General [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 is established to the satisfaction of the Attorney General [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 . . .

While the applicant is not inadmissible for her disorderly conduct or loitering convictions, the AAO finds that she is inadmissible under Section 212(a)(2)(D)(i) of the Act for her prostitution convictions. The AAO notes that the District Director erred in determining that the applicant needed to show extreme hardship to her qualifying relative in order to qualify for a section 212(h) waiver, as the applicant's convictions fall under Section 212(a)(2)(D)(i) of the Act. To qualify for a waiver, the applicant needs to show that she is not a national security risk and that she has been rehabilitated.

The applicant has not had any criminal arrests or convictions since 2002. *See FBI Rap Sheet*. Her sentences consisted of participating in community service and paying fines. *Certificate of Disposition, Criminal Court of*

the City of New York, County of Queens, dated January 7, 2003; *Transcript of Docket, Atlantic City Municipal Court, Atlantic City, New Jersey*, dated January 3, 2003. The AAO notes that there is nothing in the record to confirm that the applicant successfully completed her sentences. According to her in-laws, the applicant wants to do what is right and works hard to be a very positive asset in the community. *Statement from the parents of the applicant's spouse*, dated February 2, 2005. While the AAO acknowledges this statement, it observes that the applicant's in-laws make no mention of her past criminal activities, nor how the applicant has specifically rehabilitated herself. A statement written by the applicant discusses the love she has for her spouse and the difficulties she would face if she were to return to Korea. *Statement from the applicant*, dated January 31, 2005. The statement does not discuss her prior criminal convictions and how she has changed her life since that time. The record does not demonstrate remorse from the applicant. The record does not include letters of employment for the applicant or letters from additional family members and friends attesting to the positive character of the applicant. The applicant's spouse notes the difficulties he would face if he were separated from the applicant as well as the hardship he would endure if he moved to Korea. *Statement from the applicant's spouse*, dated January 31, 2005. As previously noted, the applicant does not need to show that her qualifying relative would suffer extreme hardship if she resided in Korea. Due to the nature of her criminal convictions, the applicant must show that she has been rehabilitated. Based on the evidence included in the record, the AAO does not find that the applicant has demonstrated that she has been rehabilitated. The AAO therefore does not find that the applicant qualifies for a 212(h) waiver for being inadmissible pursuant to Section 212(a)(2)(D) of the Act.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval rests with the applicant. *See* Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has not met her burden.

ORDER: The appeal is dismissed.