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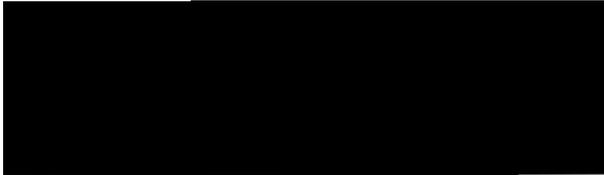
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U.S. Department of Homeland Security
20 Mass. Avenue, N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

H2



FILE:

Office: CALIFORNIA SERVICE CENTER

Date: APR 22 2008

IN RE:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the
Immigration and Nationality Act (INA), 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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Director, California Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for further consideration.

The applicant [REDACTED] a native and citizen of Cuba, was admitted to the United States on September 28, 1999 as a refugee pursuant to section 207 of the Immigration and Nationality Act (the Act). The applicant was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude. The record indicates that the applicant has a U.S. citizen spouse and child, and a lawful permanent resident father. The applicant seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his family in the United States.

The director determined that the applicant had failed to establish that a denial of his waiver request would result in extreme hardship to his U.S. citizen spouse, parent, son or daughter. He denied the application accordingly. *Director's Form I-601 Decision*, undated.

On appeal, counsel asserts that the applicant's spouse and child would suffer extreme hardship as a result of the applicant's inadmissibility to the United States. Counsel states that the applicant's spouse entered the United States as a refugee and cannot return to Cuba for fear of persecution. Counsel also states that the applicant's inadmissibility would cause the applicant's spouse and child financial and psychological hardship. *Counsel's Memorandum*, undated.

The AAO notes that the applicant, who entered the United States as a refugee, has filed the Form I-601, Application for Waiver of Ground of Excludability. However, an applicant admitted to the United States as a refugee may not file for a waiver of inadmissibility using the Form I-601. Pursuant to the regulations at 8 C.F.R. § 207.3:

(b) Filing requirements. The applicant for a waiver must submit Form I-602, Application by Refugee for Waiver of Grounds of Inadmissibility, with the Service office processing his or her case. The burden is on the applicant to show that the waiver should be granted based upon humanitarian grounds, family unity, or the public interest. The applicant shall be notified in writing of the decision, including the reasons for denial, if the application is denied. There is no appeal from such decision.

In that the applicant filed the Form I-601 pursuant to the director's instruction, the AAO withdraws the director's decision with regard to the applicant's waiver request and remands the matter to the director so that he may request a Form I-602 and other documentation as appropriate from the applicant. In returning this case to the director, the AAO notes that a denial of a Form I-602 may not be appealed. The Form I-602 may, however, be considered by the immigration judge if the Form I-485, Application to Register Permanent Residence or Adjust Status, is renewed during removal proceedings. See *Adjudicator's Field Manual*, Chapter 41.6(b)(2)(B).

ORDER: The director's decision is withdrawn. The matter is remanded for further consideration consistent with the above discussion.