

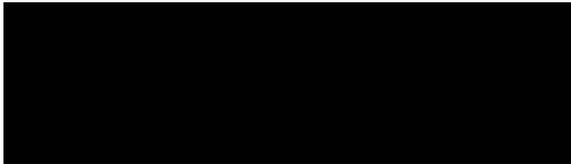
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U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED] Office: LOS ANGELES

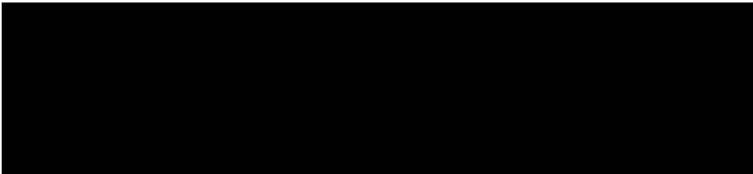
Date:

JUN 23 2008

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:



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 District Director, Los Angeles, California, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected and the matter returned to the district director for further proceedings consistent with this decision.

The applicant is a native and citizen of China who was found to be inadmissible to the United States pursuant to 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 committed crimes involving moral turpitude; and section 212(a)(2)(D)(i) of the Act, 8 U.S.C. § 1182(a)(2)(D)(i), for having engaged in prostitution within ten years of the date of her application for adjustment of status. 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 her U.S. citizen spouse.

The record reflects that the applicant's husband, [REDACTED], filed a Petition for Alien Relative (Form I-130) naming the applicant as the beneficiary on October 29, 2004. The applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485) on the same date. The record shows that on April 14, 2005, the I-485 petition and the I-130 petition were denied when the applicant failed to appear for an interview. On September 14, 2005, the district director reopened the I-485 petition and requested that the applicant file an Application for Waiver of Grounds of Inadmissibility (Form I-601), which she did on September 22, 2005.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the waiver application accordingly. *Decision of District Director*, dated February 3, 2006.

The applicant has appealed that decision. The record reflects that no decision to reopen the denied Form I-130 petition has been issued by the director. The necessity of filing a Form I-601 waiver application is predicated on the existence of an underlying petition or application, in this case the applicant's Form I-485 application for permanent resident status. Although USCIS allows for the simultaneous filing of Forms I-130 and I-485, the applicant's eligibility to apply for permanent resident status ended on April 14, 2005 when the director denied the Form I-130 petition filed by the applicant's spouse.

In the absence of an approved or pending Form I-130 petition, the adjudication of the applicant's Form I-601 waiver application was unnecessary. Therefore, the district director's decision denying the Form I-601 waiver application is withdrawn and the appeal rejected. The matter will be returned to the district director, who, if she wishes to reopen the Form I-130 petition as she did the Form I-485 application, may then enter a decision on the applicant's Form I-601 waiver application.

ORDER: The appeal is rejected. The matter is returned to the district director for further proceedings consistent with the foregoing.