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U.S. Citizenship
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FILE:



Office: PHILADELPHIA, PENNSYLVANIA

Date: SEP 08 2008

IN RE:

Applicant:



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:

SELF-REPRESENTED

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 Acting District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Dominican Republic 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 crimes involving moral turpitude. The record indicates that the applicant is married to a naturalized United States citizen and is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 wife.

The Acting District Director found that the applicant failed to establish that extreme hardship would be imposed on his qualifying relatives and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the Acting District Director*, dated August 19, 2006.

On appeal, the applicant claims that he had a gambling addiction, but he is now in recovery. *Form I-290B*, filed September 12, 2006.

The record includes, but is not limited to, an affidavit from the applicant's wife, a psychological assessment on the applicant, a letter from [REDACTED] regarding the applicant's wife, letters of recommendations from the applicant's friends and acquaintances, and criminal court dispositions from Kings County, New York and Bronx County, New York. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on September 9, 1998, the applicant was convicted of two charges of being in possession of gambling records in the second degree, and was sentenced to thirty (30) days in jail and a fine. On June 28, 2000, the applicant was convicted of disorderly conduct, and was sentenced to fifteen (15) days in jail and a fine. On July 28, 2004, the applicant was convicted of being in possession of a gambling device, and was sentenced to thirty (30) days in jail and a fine.

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

(i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of-

(I) a crime involving moral turpitude...or an attempt or conspiracy to commit such a crime...is inadmissible.

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

The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I)...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 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...

In the present application, the record indicates that the applicant initially entered the United States sometime before July 15, 1998, the date he was arrested for being in possession of gambling records and a gambling device. On September 9, 1998, the applicant was convicted of two charges of being in possession of gambling records in the second degree, and was sentenced to thirty (30) days in jail and a fine. On June 28, 2000, the applicant was convicted of disorderly conduct, and was sentenced to fifteen (15) days in jail and a fine. On July 28, 2004, the applicant was convicted of being in possession of a gambling device, and was sentenced to thirty (30) days in jail and a fine. On January 4, 2006, the applicant's United States citizen wife filed a Form I-130 on behalf of the applicant. On the same day, the applicant filed an Application to Register Permanent Resident or Adjust Status (Form I-485) and a Form I-601. On August 19, 2006, the Acting District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to his qualifying relative. On October 17, 2007, the applicant's Form I-130 was approved.

The applicant is seeking a section 212(h) waiver of the bar to admission resulting from a violation of section 212(a)(2)(A)(i)(I) of the Act. A waiver under section 212(h) of the Act is dependent first upon a showing that the bar imposes an extreme hardship to the citizen or lawfully resident spouse, parent or child of the applicant. Hardship the alien himself experiences upon removal is irrelevant to section 212(h) waiver proceedings; the only relevant hardship in the present case is hardship suffered by the applicant's United States citizen spouse. Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996).

In *Matter of Cervantes-Gonzalez*, 22 I&N Dec. 560, 565-66 (BIA 1999), the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States;

the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate.

On August 27, 2008, the AAO received a letter from the applicant's spouse indicating that they are currently separated and she does not know where he is; therefore, he cannot establish that his wife would suffer extreme hardship if he was removed from the United States.¹ The AAO finds that the applicant does not establish extreme hardship to his wife if she joined the applicant in the Dominican Republic or remained in the United States without him.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's spouse caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, no purpose would be served in discussing whether he merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A) 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 has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

¹ The letter also indicates that the applicant's spouse wishes to "Petition for Removed or cancel application Form I-485." As she is not the applicant, she cannot cancel the Form I-485; however, if she wishes, she can withdraw the I-130 petition she filed on his behalf.