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U.S. Citizenship
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FILE:



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SEP 10 2008

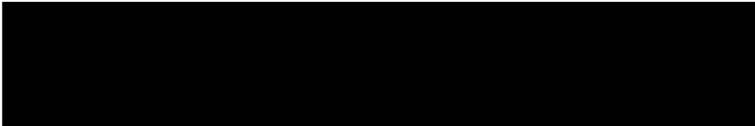
IN RE:



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.

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, Baltimore, Maryland. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed as the underlying Form I-130, Petition for Alien Relative (“I-130 Petition”) has been withdrawn and the relevant Form I-601, Application for Waiver of Grounds of Excludability (“I-601 Application”) is moot.

The applicant is a native and citizen of Jamaica 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 a crime involving moral turpitude. The applicant is married to a U.S. citizen and has three U.S. citizen children. She 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.

The record reflects that on September 27, 2002 the applicant’s spouse filed a Form I-130, Petition for Alien Relative on her behalf, which was approved on March 15, 2003. The applicant concurrently filed a Form I-485, Application to Register Permanent Resident or Adjust Status, which was denied on December 8, 2005. On April 8, 2005, the applicant submitted a Form I-601, Application for Waiver of Ground of Excludability. The District Director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Form I-601 application. *Decision of the District Director*, dated December 8, 2005.

The AAO notes that the U.S. citizen petitioner who filed the Form I-130 petition on which the applicant’s adjustment application is based sent a letter to Citizenship and Immigration Services stating, “I, [REDACTED] hereby inform you of my intention to withdraw my petition for the above subject effective immediately. My reason is that we have not been living together for the past six months and the relationship does not seem to be heading towards any reconciliation.” *Withdrawal Letter*, dated December 5, 2006. On June 8, 2007 the U.S. citizen petitioner sent a second letter elaborating on his reasons for withdrawal. As the viability of the applicant’s Form I-601 application is dependent on the underlying Form I-130 petition and the Form I-130 has been withdrawn, the applicant’s Form I-601 application is moot.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(2)(A)(i)(I) 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 cannot meet that burden due to the Form I-130 petition being withdrawn. Accordingly, the appeal will be dismissed as the underlying application is moot.

ORDER: The appeal is dismissed as the underlying application is moot.