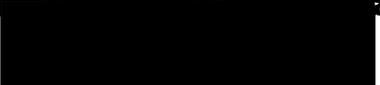


AD

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



FILE # [Redacted]

Office: Newark

Date:

MAY 14 2003

IN RE: Applicant: [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: Self-represented

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

MAY1403_04M2212

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The applicant is a native and citizen of China who was found to be inadmissible to the United States under section 212(a)(2)(D) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(D), for having engaged in prostitution within 10 years of the date of the application for adjustment of status. The applicant married a United States citizen on March 22, 1999, and is the beneficiary of an approved Petition for Alien Relative. The applicant seeks a waiver of this permanent bar to admission as provided under section 212(h) of the Act, 8 U.S.C. § 1182(h).

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon her United States citizen husband and denied the application accordingly.

On appeal, the applicant's spouse states that the applicant was not properly represented by prior counsel, she was never convicted of promoting prostitution (a felony), and she did not provide the police department an Elmhurst, Queens, New York address on January 6, 1999. The applicant's spouse submits a medical and psychological report on his behalf, letters of reference, photos of his wife's injuries, and states that she became a victim of the wrong people and now feels extreme remorse.

Section 212(a)(2) of the Act provides in pertinent part, that:

(D) 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 part, that:

(1)(A) the Attorney General [now Secretary of Homeland Security] may, in his discretion, waive application of subparagraph (D),...if in the case of any immigrant it is established to the satisfaction of the Attorney General that-

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection...,

(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...; and

(2) the Attorney General, in his discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or for adjustment of status.

The statutes were amended by IMMACT 90 and prostitution was eliminated as grounds for removal (deportation.) The statute also limited the exclusion (inadmissibility) of former prostitutes to aliens who had engaged in prostitution within 10 years of the date of the application for a visa, etc. IMMACT 90 created two ways to qualify for a section 212(h) waiver. Under the first alternative relating to prostitutes, the alien must establish that:

(i) he or she is inadmissible only for engaging in prostitution or procuring or attempting to procure prostitutes,

(ii) his or her admission would not be contrary to the national welfare, safety, or security of the United States; and

(iii) he or she has been rehabilitated.

The record reflects that the applicant was admitted to the United States as a nonimmigrant student in April 1996. On January 3, 1997, January 6, 1999, and February 16, 1999, the applicant was arrested and charged with engaging in prostitution. On February 19, 1997, she was found guilty and fined. On September 6, 2000, she pleaded guilty on both counts and was fined.

Eligibility hinges upon the applicant showing that her admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and that she has been rehabilitated. A showing of a specific degree of hardship is no longer required.

Evidence in the record indicates the applicant has sufficiently reformed or rehabilitated to warrant a favorable exercise of discretion. The applicant has presented evidence that she has rehabilitated from her prior acts, has a bona fide marriage, is a responsible individual, and is not inadmissible under any other section of the Act. The applicant has shown that she warrants the favorable exercise of the Attorney General's discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h), the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has met that burden. Accordingly, the appeal will be sustained.

ORDER: The decision of the district director is withdrawn, and the waiver application is approved.