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

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NOV 30 2004

[redacted]

FILE: [redacted] Office: NEW YORK, NEW YORK Date:

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(h) of the Immigration and Nationality Act, 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Interim District Director, New York, New York, and is now before the Administrative Appeals Office (AAO) on appeal. The director's decision will be withdrawn and the matter remanded for entry of a new decision.

The applicant is a native of Colombia and citizen of Venezuela who was admitted to the United States on March 28, 1988, as a nonimmigrant visitor with authorization to remain temporarily. The applicant is the beneficiary of an approved Petition for Alien Relative. She was found to be inadmissible to the United States under § 212(a)(2)(D)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(D)(i), for having engaged in prostitution within 10 years from the date of application for a visa, admission, or adjustment of status. The AAO also finds the applicant inadmissible under § 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of three crimes involving moral turpitude (prostitution). The applicant seeks a waiver under § 212(h) of the Act, 8 U.S.C. § 1182(h), to remain in the United States with her husband.

The interim district director analyzed the waiver application pursuant to the standards set forth at § 212(g)(3) of the Act, which applies to aliens found inadmissible due to a mental or physical disorder associated with behavior that poses a threat to people or property, under § 212(a)(1)(A)(iii). The interim district director concluded that the applicant had failed to establish that she warranted a favorable exercise of the Attorney General's discretion and denied the application accordingly. Since the interim district director determined that the applicant was inadmissible under § 212(a)(2)(D)(i), however, the correct section to apply to the waiver analysis is § 212(h) of the Act, rather than § 212(g). The waiver provisions at § 212(h) would also apply had the director analyzed the other pertinent bar to admissibility at § 212(a)(2)(A)(i)(I) of the Act.

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

> (A)(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 (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.
>
> . . . .
>
> (D) Prostitution and commercialized vice. –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 [is inadmissible].
>
> . . . .
>
> (F) Waiver authorized.- For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).

Section 212(h) states in pertinent part:

> (h) The Attorney General may, in his discretion, waive the application of subparagraphs . . . (A)(i)(I) . . . and . . . (D) . . . of subsection (a)(2) . . . if-
>
> > (1)(A) 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). . . . of such subsection or 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 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.

The director must afford the petitioner reasonable time to provide evidence pertinent to the issue of her eligibility for a waiver pursuant to § 212(h) of the Act, and any other evidence the director may deem necessary. The director shall then render a new decision based on the evidence of record as it relates to the regulatory requirements for eligibility. As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The interim district director's September 11, 2003 decision is withdrawn. The petition is remanded to the director for entry of a new decision, which if adverse to the petitioner, is to be certified to the AAO for review.