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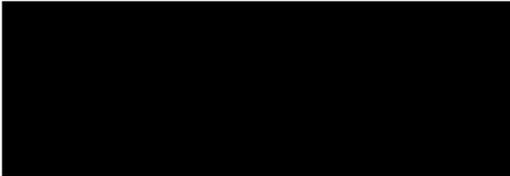
Applicant:



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:



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 District Director, Los Angeles, California, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(D) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(D), as an alien convicted of prostitution. The record indicates that the applicant is the husband of a United States citizen and the father of two United States citizen children. 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 United States citizen wife and children.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on the applicant's wife and children and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director Decision*, dated January 20, 2005.

On appeal, the applicant, through counsel, asserts that the applicant's United States citizen wife will suffer extreme hardship if the applicant is removed from the United States. *Form I-290B*, filed February 18, 2005.

The record includes, but is not limited to, counsel's brief, a declaration from the applicant's wife, birth certificates for the applicant's United States citizen children, a letter from the applicant's employer, and court dispositions from the Municipal Court of South Bay, Los Angeles County Superior Court, and the Municipal Court of Southeast. The entire record was reviewed and considered in arriving at a decision on the appeal.

On March 16, 2000, the applicant was arrested by the Southeast area Los Angeles Police Department, for disorderly conduct: prostitution. On April 7, 2000, the applicant was convicted of prostitution, a misdemeanor, and sentenced to one (1) year of probation.

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

(D) *Prostitution and commercialized vice.*—Any alien who—

- (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
...
is inadmissible.

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

- (h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (D)...of subsection (a)(2) if—

(1) (A) in the case of any immigrant it is established to the satisfaction of the [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 established to the satisfaction of the [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...

(2) the [Secretary], 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 adjustment of status.

The applicant is inadmissible under section 212(a)(2)(D) of the Act for attempting to procure a prostitute; however, he is eligible for a waiver under section 212(h)(1)(A). On January 20, 2005, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to his United States citizen wife and children, under section 212(h)(1)(B). The AAO finds that the District Director erred in basing his decision on section 212(h)(1)(B) of the Act and failing to consider the eligibility of the applicant for waiver under section 212(h)(1)(A). On March 7, 1997, the applicant was convicted of fraudulent use of a telephone, a misdemeanor, and was sentenced to two (2) years probation. Additionally, on October 2, 1997, the applicant was convicted of disorderly conduct: loitering on private property, a misdemeanor, and was sentenced to two (2) years probation. The record reflects that the applicant has not been convicted of any additional crimes since his last conviction in 2000, and the record of proceedings does not establish that the admission of the applicant to the United States would be "contrary to the national welfare, safety, or security of the United States." The AAO notes that the applicant has paid all of his fines and completed his probations.

Counsel asserts that the applicant's family will "suffer from serious financial and psychological problems." *Applicant's Appeal Brief*, page 1, filed March 16, 2005. The applicant's wife claims she needs her husband to stay in the United States, and if the waiver is denied, she "will suffer a deep depression." *Declaration of* [REDACTED], dated February 23, 2005. The AAO notes that there are no professional evaluations for the

AAO to review to determine if the applicant's wife and/or children are suffering from any emotional or psychological problems. Counsel states the applicant has "three non-violent misdemeanor convictions." *Applicant's Appeal Brief, supra* at 2. Counsel contends that if the applicant were removed from the United States, the applicant's wife "will lose the ability to afford rent just by herself and will likely have to work two jobs to provide for the children." *Id.* at 5. The applicant's wife states that if the applicant were returned to Mexico, she "and the children will not accompany him...and [they] will be forever separated." *Declaration of [REDACTED], supra*. She claims she does not speak Spanish very well, she has lived in the United States for most of her life, and her parents and siblings reside in the Los Angeles area. Additionally, she states her son does not speak Spanish very well.

The record reflects that the applicant meets the requirements for waiver of his grounds of inadmissibility under section 212(h)(1)(A) of the Act. Further, the AAO notes that the applicant's United States citizen wife and children would suffer emotional and financial hardship as a result of their separation from the applicant. *Declaration of [REDACTED], supra* ("We have saved some money for the past six years to purchase our home...We want to have our own home, live in a better neighborhood, and provide our children with all that is necessary to fulfill the American Dream. We both want our children to go to college and we are always attentive with the eldest's school work."); *Letter from [REDACTED]*, dated February 18, 2005 ("[The applicant] is a full time employee and his occupation is in our Engineering Department; [the applicant] is compensated at an hourly rate of \$20.50 and 40 hours per week. During this time of employment [the applicant] has been considered to be trustworthy and a dependable employee."); *Applicant's Appeal Brief, supra* at 2-5 ("[The applicant] has full-time employment in the Engineering Department of [REDACTED] Management Solutions and earns almost \$50,000 per year...[REDACTED] also works on a full-time basis at SPL, Inc., but earns only \$9.50 per hour...[T]he Applicant's United States Citizen children would become emotionally disturbed by the absence of their father, by their mother's frustration, and by the radical changes their lives would experience if the Government simply disregarded their need for their father on account of three insignificant misdemeanor convictions...Without his financial support, his wife will lose the ability to afford rent just by herself and will likely have to work two jobs to provide for the children. Therefore, the children would not only lose their father but would also get largely deprived of their mother's time and attention.").

The favorable factors presented by the applicant are the extreme hardship to his United States citizen wife and children, who depend on him for emotional and financial support; the applicant's stable work history in the United States; and a positive character reference.

The unfavorable factors presented in the application are the applicant's convictions for prostitution in 2000, fraudulent use of a telephone in 1997, and loitering on private property in 1997, and periods of unauthorized presence and employment. The AAO notes that the applicant has not been charged with any crimes since his last conviction in 2000.

While the AAO does not condone his actions, the applicant has established that the favorable factors in his application outweigh the unfavorable factors. The district director's denial of the I-601 application was thus improper.

In discretionary matters, the applicant bears the full burden of proving his eligibility for discretionary relief. *See Matter of Ducret*, 15 I&N Dec. 620 (BIA 1976). Here, the applicant has now met that burden. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained and the application is approved.