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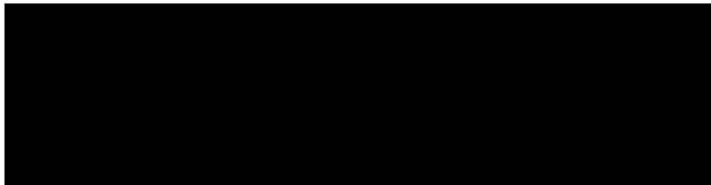
Office: LOS ANGELES

Date: APR 26 2006

IN RE: [REDACTED]

PETITION: 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 PETITIONER:



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 cursive script, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The District Director, Los Angeles, California, denied the waiver application, and it is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed, the previous decision of the district director will be withdrawn and the application declared moot.

The applicant is a native and citizen of Armenia 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 been convicted of a crime involving moral turpitude. The applicant is the spouse of a U.S. citizen. He 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 spouse.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative or that the facts of the case warranted a favorable exercise of discretion and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *Decision of the District Director*, dated October 15, 2004.

The record reflects that, on November 18, 1994, the applicant pled guilty to paying for prostitution in violation of section 266e of the California Penal Code. Section 266e of the California Penal Code states that:

Every person who purchases, or pays any money or other valuable thing for, any person for the purpose of prostitution as defined in subdivision (b) of Section 647, or for the purpose of placing such person, for immoral purposes, in any house or place against his or her will, is guilty of a felony.

Section 647(b) of the California Penal Code defines prostitution as:

Who solicits or who agrees to engage in or who engages in any act of prostitution. A person agrees to engage in an act of prostitution when, with specific intent to so engage, he or she manifests an acceptance of an offer or solicitation to so engage, regardless of whether the offer or solicitation was made by a person who also possessed the specific intent to engage in prostitution. No agreement to engage in an act of prostitution shall constitute a violation of this subdivision unless some act, in addition to the agreement, is done within this state in furtherance of the commission of an act of prostitution by the person agreeing to engage in that act. As used in this subdivision, "prostitution" includes any lewd act between persons for money or other consideration.

On June 15, 1994, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485), based on an I-130 Petition for Alien Relative (Form I-130) filed by the applicant's U.S. citizen spouse. The record shows that the applicant appeared at CIS' Chicago District Office on April 2, 2001. The applicant admitted that he had been convicted for paying for prostitution.

On April 2, 2001, the district director issued a notice to the applicant informing him of the need to file Form I-601 because, even though he was inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), for having been convicted of a crime involving moral turpitude, he may be eligible for a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). On July 31, 2001, the

applicant filed the Form I-601 with documentation supporting his claim that the denial of the waiver would result in extreme hardship to his family members.

On October 5, 2004, the district director issued a notice of denial of the application because the applicant was convicted of a crime involving moral turpitude and had failed to establish that extreme hardship would be imposed on a qualifying family member.

On appeal, counsel asserts that the district director erred in finding that the applicant's wife would not experience extreme hardship if the applicant were to be removed to Armenia. *See Applicant's Brief* dated November 19, 2004. In support of the appeal, counsel submitted the above-referenced brief and copies of documents previously submitted to support the Form I-601. The entire record was reviewed and considered in rendering a decision on the appeal.

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

- (1) Criminal and related grounds. —
 - (A) Conviction of certain crimes. —
 - (i) In general. — Except as provided in clause (ii), any 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.

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

Waiver of subsection (a)(2)(A)(i)(I) . . .

The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I). . . if

(1)

(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 district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's admission to and conviction for paying for prostitution. Counsel contends that the district director's determination of inadmissibility is erroneous, since the applicant is only inadmissible pursuant to

section 212(a)(2)(D) of the Act, 8 U.S.C. § 1182(a)(2)(D). The Board of Immigration Appeals has only found that those receiving payment for prostitution, directly or indirectly, have committed a crime involving moral turpitude. *See Matter of Lambert*, 11 I&N Dec. 340 (BIA 1965). In the instant case, the applicant was not convicted for receiving payment for prostitution, but for paying for prostitution. The AAO, therefore, finds that the applicant is not inadmissible pursuant to section 212(a)(2)(A)(i)(I) of the Act, since he is not an alien who was convicted of a crime involving moral turpitude.

Section 212(a)(2)(D) states, in pertinent part:

(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.

Counsel contends that, since it has been more than ten years since the applicant was convicted of paying for prostitution, he is no longer inadmissible pursuant to section 212(a)(2)(D) of the Act and is therefore not required to file a waiver application.

An application for admission or adjustment is a "continuing" application adjudicated based on the law and facts in effect on the date of the decision. *Matter of Alarcon*, 20 I&N Dec. 557 (BIA 1992). There has been no final decision made on the applicant's I-485 application, so the applicant, as of today, is still seeking admission by virtue of adjustment of status. The applicant's conviction occurred on November 18, 1994. It has been more than ten years since the conviction that made the inadmissibility issue arise in his application. A clear reading of the law reveals that the applicant is no longer inadmissible. He, therefore, does not require a waiver of inadmissibility, so the appeal will be dismissed, the decision of the district director will be withdrawn and the waiver application will be declared moot.

ORDER: The appeal is dismissed, the prior decision of the district director is withdrawn and the application for waiver of inadmissibility is declared moot.