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

H2

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FILE: [REDACTED] Office: PORTLAND, OREGON Date: SEP 17 2008

IN RE: Applicant: [REDACTED]

APPLICATIONS: 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

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, Portland, Oregon, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The AAO notes that on appeal, the applicant requested 30-days to submit a brief and/or evidence to the AAO. *Form I-290B*, filed April 26, 2006. The record contains no evidence that a brief or additional evidence was filed within 30-days. Therefore, the record is considered complete.

The record reflects that the applicant is a native and citizen of Cambodia 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 has children and his brother is a naturalized United States citizen. 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.

The District Director found that the applicant failed to establish that extreme hardship would be imposed on a qualifying family member and denied the Application for Waiver of Grounds of Excludability (Form I-601) accordingly. *District Director's Decision*, dated March 27, 2006.

On appeal, the applicant states that he is "eligible for permanent residence. To deny permanent residence would result in a hardship to [his] family and if [he] returned to Cambodia because of [his] past association, [his] life would be in danger." *Form I-290B*, filed April 26, 2006.

The record includes, but is not limited to, a letter from the applicant's brother, the applicant's brother's certificate of naturalization, and court dispositions for the applicant's arrests and convictions. The entire record was reviewed and considered in arriving at a decision on the appeal.

The record reflects that on March 10, 1995, the applicant was arrested for prostitution. On October 11, 1996, the applicant was convicted of prostitution, for his March 10, 1995 arrest. On the same day, the applicant was convicted of criminal trespass and was sentenced to three (3) years probation. On July 31, 1999, the applicant was arrested for prostitution. On October 26, 1999, the applicant was convicted of prostitution and was sentenced to eighteen (18) months probation.

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

(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,
- (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 pertinent part, that:

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)...or subsection (a)(2) if—

- (1) (A) in the case of any immigrant it is established to the satisfaction of the [Secretary] that—

- (i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) 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 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.

In the present application, the record indicates that on October 21, 1991, the applicant’s brother, a naturalized United States citizen, filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. The applicant’s Form I-130 was approved on November 25, 1991. On March 30, 1993, the applicant entered the United States on public interest parole. On March 10, 1995, the applicant was arrested for prostitution. On October 11, 1996, the applicant was convicted of prostitution, for his March 10, 1995 arrest. On the same

day, the applicant was convicted of criminal trespass and was sentenced to three (3) years probation. On July 31, 1999, the applicant was arrested for prostitution. On October 26, 1999, the applicant was convicted of prostitution and was sentenced to eighteen (18) months probation. On April 14, 2003, the applicant filed an Application to Register Permanent Residence or Adjust Status (Form I-485). On February 22, 2006, the applicant filed a Form I-601. On March 27, 2006, the District Director denied the applicant's Form I-485 and Form I-601, finding the applicant failed to demonstrate extreme hardship to a qualifying relative.

Based on his prostitution convictions, the applicant is inadmissible under section 212(a)(2)(D) of the Act. He is, however, eligible for a waiver under section 212(h)(1)(A) of the Act. On March 27, 2006, the District Director denied the applicant's Form I-601, finding the applicant failed to demonstrate extreme hardship to a qualifying relative under section 212(h)(1)(B) of the Act. 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 a waiver under section 212(h)(1)(A). Under section 212(h)(1)(A) of the Act, the applicant must demonstrate that his admission to the United States would not be contrary to the national welfare, safety, or security of the United States; and that he has been rehabilitated. The AAO notes that the applicant's last conviction for prostitution occurred on October 26, 1999, and he has not been convicted of any additional crimes since this last conviction, 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 applicant's brother states that when the applicant's marriage deteriorated, he had problems with the law. *Letter from [REDACTED]*, dated February 17, 2006. "[The applicant] does not want to have conflict with the law. His relationship with his ex-wife gave him much pressure in 1994 and 1995. [He is] glad to write [us] now because [the applicant] has finally put all those matters to the back of his mind. He is once again busy working every day, happy to be around his extended family members and new friends.... [The applicant] is not a criminal. In his earlier years in Portland, he has a troubling marital life resulting in three contacts with the police. He has since recovered as evidenced by new friendships, busy at work and no contact with police for seven straight years." *Id.*

The record reflects that the applicant meets the requirements for a waiver of his grounds of inadmissibility under section 212(h)(1)(A) of the Act. Further, the AAO notes that the applicant's daughter and United States citizen brother would suffer emotional and financial hardship as a result of their separation from the applicant. *See Record of Sworn Statement*, dated November 8, 2005 (The applicant states he has child support payments garnished from his paycheck every month).

The favorable factors presented by the applicant are the extreme hardship to his daughter and United States citizen brother, who depend on him for emotional and financial support; the applicant's 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 1996 and 1999, and his conviction for criminal trespass in 1996. The AAO notes that the applicant has not been charged with any crimes since his last conviction in 1999.

While the AAO does not condone his actions, the applicant has established that the favorable factors in his application outweigh the unfavorable factors. 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 met that burden. Accordingly, the appeal will be sustained.

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