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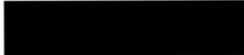
U.S. Citizenship
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Services

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FILE:



Office: NEWARK, NJ

Date:

JAN 08 2009

IN RE:



APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(h) of the
Immigration and Nationality Act (INA), 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.

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Newark, New Jersey. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed as the applicant is not inadmissible under 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), and the relevant waiver application is moot.

The applicant, a native and citizen of Guatemala, 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 record indicates that the applicant has two U.S. citizen children and seeks a waiver of inadmissibility under section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside with his family in the United States.

The district director based the finding of inadmissibility under section 212(a)(2)(A)(i)(I) of the Act on the applicant's conviction of the offense of engaging in prostitution on March 19, 2003. Counsel does not contest the district director's determination of inadmissibility. *District Director's Decision*, dated June 25, 2005.

The district director also found that the applicant had failed to establish that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Id.*

On appeal, counsel asserts that the applicant's two minor children will suffer extreme hardship as a result of the applicant's inadmissibility. *Form I-290B*, dated July 25, 2005.

The record indicates that the applicant was convicted of engaging in prostitution under the New Jersey Code of Criminal Justice, section 2C: 34-1(b)(1), on March 19, 2003 for events that took place on May 15, 1999. The maximum penalty for this offense is six months imprisonment. The applicant was not imprisoned for his offense, but was ordered to pay a fine of \$655. The AAO notes that practicing prostitution is a crime involving moral turpitude. *See Matter of W -*, 4 I&N Dec. 401 (C.O. 1951).¹

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

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of—

¹ The AAO notes that the Board of Immigration Appeals (BIA) recently held in *Matter of Oscar Gonzalez-Zoquiapan*, 24 I&N Dec. 549, 553 (BIA 2008) that a single act of soliciting prostitution does not fall within section 212(a)(2)(D)(ii) of the Act, which bars the admission of an alien who attempts to procure, procures or has procured prostitutes or persons for the purpose of prostitution. However, the applicant in the present matter has been found inadmissible under section 212(a)(2)(A)(i)(I) of the Act, not section 212(a)(2)(D) and the preceding decision is not precedent for the purposes of this proceeding.

- (I) a crime involving moral turpitude (other than a purely political offense) or an attempt or conspiracy to commit such a crime . . . is inadmissible.

(ii) Exception.-Clause (i)(I) shall not apply to an alien who committed only one crime if-

....

- (II) the maximum penalty possible for the crime of which the alien was convicted (or which the alien admits having committed or of which the acts that the alien admits having committed constituted the essential elements) did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of 6 months (regardless of the extent to which the sentence was ultimately executed).

In the present case, the applicant was convicted of engaging in prostitution under the New Jersey Code of Criminal Justice, section 2C: 34-1(b)(1), on March 19, 2003 for events that took place on May 15, 1999. The maximum penalty for this offense is six months imprisonment. The applicant was not imprisoned for his offense, but was ordered to pay a fine of \$655. The evidence in the record thus establishes that the applicant's conviction falls within the petty offense exception set forth in the Act.

Accordingly, the AAO finds that the applicant is not inadmissible. The appeal will be dismissed as the applicant is not inadmissible under 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), and the relevant waiver application is moot.

ORDER: The appeal is dismissed as the underlying application is moot.