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U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: PHILADELPHIA, PA Date: JUL 01 2009

IN RE: [redacted]

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:

[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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Ellen C. Johnson

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, Philadelphia, Pennsylvania and 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)(D)(ii) of the Act, 8 U.S.C. § 1182(a)(2)(D)(ii), or 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), thus the relevant waiver application is moot.

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)(ii) of the Act for having procured a person for the purpose of prostitution. The applicant is married to a U.S. Citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may remain in the United States with his wife and children.

The district director based the finding of inadmissibility under section 212(a)(2)(D)(ii) of the Act on the applicant's conviction for patronizing a prostitute. *See Decision of the District Director denying Form I-485* dated May 7, 2007. The record reflects that the applicant was convicted of the offense of patronizing a prostitute on May 30, 2006 and was also arrested and charged with this crime on October 9, 2003. He pleaded guilty before judgment and the charge was later dismissed upon completion of probation before judgment. *See Court of Common Pleas Criminal Docket, State of Delaware,* dated February 13, 2007.

The district director also found that the applicant 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, based on the requirements of section 212(h)(1)(B) of the Act. *District Director's Decision on Form I-601* dated May 7, 2007.

On appeal, counsel states that the application for waiver of grounds of inadmissibility was filed without supporting documentation, and counsel submitted additional documentation, including evidence related to the medical and psychological condition of the applicant's wife, with the appeal. *See Notice of Appeal to the AAO* dated May 25, 2007. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

> **(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.

The applicant was arrested twice in the state of Delaware for patronizing a prostitute. After his first arrest, he pleaded guilty before judgment and the charges were dismissed with a disposition of probation before judgment. He was later convicted of patronizing a prostitute in violation of 11 Delaware Code § 1343, which provides, in pertinent part:

> § 1343: Patronizing a prostitute prohibited
>
> (a) A person is guilty of patronizing a prostitute when:
>
> (1) Pursuant to a prior agreement or understanding, the person pays a fee to another person as compensation for that person's having engaged in sexual conduct with the person; or
>
> (2) The person pays or agrees to pay a fee to another person pursuant to an agreement or understanding that in return therefor that person or a third person will engage in sexual conduct with the person; or
>
> (3) The person solicits or requests another person to engage in sexual conduct with the person in return for a fee.

The Board of Immigration Appeals (BIA) held in *Matter of Gonzalez-Zoquiapan,* 24 I&N Dec. 549 (BIA 2008) that a single act of soliciting prostitution on one's own behalf does not fall within section 212(a)(2)(D)(ii) of the Act, which provides for the inadmissibility of an alien who "procured . . . prostitutes or persons for the purpose of prostitution." In that decision the BIA stated,

> The language of section 212(a)(2)(D)(ii), on its face, relates only to persons who "procure" others for the purpose of prostitution or who receive the proceeds of prostitution. . . .We agree with the respondent that under the most reasonable interpretation of the statute, the term "procure" does not extend to an act of solicitation of a prostitute on one's own behalf. . . . The history of the prostitution ground of inadmissibility supports this construction. . . . Congress appears to have been primarily concerned with excluding and removing aliens who were involved in the business of prostitution, using the term "procure" in its traditional sense to refer to a person who receives money to obtain a prostitute for another person. Because Congress did not consider someone who solicits another to engage in prostitution for himself to be a procurer, we reject the Immigration Judge's conclusion that such a person is inadmissible under section 212(a)(2)(D)(ii) of the Act.

In the present case the applicant was convicted of patronizing a prostitute in violation of 11 Delaware Code § 1343, which prohibits obtaining or soliciting a prostitute for oneself. As this conduct does not constitute procuring a prostitute for another person, it does not render the applicant inadmissible under section 212(a)(2)(D)(ii) of the Act.

In *Matter of Gonzalez-Zoquiapan, supra*, the BIA declined to address whether solicitation of a prostitute is a crime involving moral turpitude because the appellant would have been eligible for the "petty offense" exception found in section 212(a)(2)(A)(ii)(II) of the Act. The BIA held in *Matter of Perez-Contreras*, 20 I&N Dec. 615, 617-18 (BIA 1992):

> [M]oral turpitude is a nebulous concept, which refers generally to conduct that shocks the public conscience as being inherently base, vile, or depraved, contrary to the rules of morality and the duties owed between man and man, either one's fellow man or society in general.
>
> In determining whether a crime involves moral turpitude, we consider whether the act is accompanied by a vicious motive or corrupt mind. Where knowing or intentional conduct is an element of an offense, we have found moral turpitude to be present. However, where the required *mens rea* may not be determined from the statute, moral turpitude does not inhere.

Although crimes relating to the practice of prostitution, such as maintaining a house of prostitution or securing another for employment as a prostitute, have been found to be crimes involving moral turpitude, the AAO is unaware of any legal precedent holding that soliciting or patronizing an individual for the purpose of prostitution is a crime involving moral turpitude under the Act. *See, e.g., Matter of W-*, 4 I&N Dec. 401 (C.O. 1951); *Matter of A-*, 5 I&N Dec. 546 (BIA 1953) (Knowingly permitting premises to be used as a brothel); *Matter of Lambert,* 11 I&N Dec. 340 (BIA 1965) (securing another for prostitution). In the absence of legal authority to the contrary, the AAO does not find that patronizing a prostitute in violation of 11 Delaware Code § 1343 involves a "vicious motive or corrupt mind" and is "conduct that shocks the public conscience as being inherently base, vile, or depraved" such that it must be considered a crime involving moral turpitude. Accordingly, the applicant is not inadmissible as a result of his conviction for patronizing a prostitute.

Based on the record, the AAO finds that the applicant is not inadmissible under section 212(a)(2)(D)(ii) or under section 212(a)(2)(A)(i)(I) of the Act. The waiver application filed pursuant to section 212(h) of the Act is therefore moot. As the applicant is not required to request the waiver, the appeal of the denial of the waiver will be dismissed.

ORDER: The May 27, 2007 decision of the district director is withdrawn. The appeal is dismissed as the underlying application is moot.