

identify... need to  
prevent clearly unwarranted  
invasion of personal privacy

U. S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

H2



FILE:



Office: PHILADELPHIA

Date:

MAR 30 2010

IN RE:



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.

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).

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Acting District Director, Philadelphia, Pennsylvania, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant [REDACTED] is a native and citizen of Jamaica. He was found to be inadmissible to the United States pursuant to section 212(a)(2)(D) of the Act for having been convicted of solicitation of a prostitute ("patronizing prostitution"). The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h).

The Acting District Director concluded that the applicant had failed to establish that his bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Ground of Excludability (Form I-601) accordingly. The waiver application was denied on March 17, 2006, and this appeal followed.

The record reflects that on October 4, 2004, the applicant's spouse filed a Petition for Alien Relative (Form I-130) on behalf of the applicant. The applicant concurrently filed an Application to Register Permanent Residence or Adjust Status (Form I-485) based upon the underlying Form I-130 petition. The Philadelphia District Office approved the Form I-130 petition on April 19, 2005. On April 4, 2007, the applicant's spouse filed a letter requesting the withdrawal of her Form I-130 petition "effective immediately."

The Philadelphia District Director withdrew the applicant's Form I-130 petition and noted that all action upon the petition had been terminated as of April 4, 2007. The director noted that although the applicant's spouse has indicated that she wishes to retract her withdrawal, a withdrawal may not be retracted according to the federal regulations at 8 C.F.R. § 103.2(b)(6). The director noted further that the withdrawal is without prejudice to the filing of a new Form I-130 petition on behalf of the applicant. *See District Director's Acknowledgement of Withdrawal*, dated October 12, 2007.

The viability of the applicant's Form I-601 waiver application is dependent on a Form I-485 adjustment application that is, in turn, based on an approved Form I-130 petition. *See* 8 C.F.R. § 212.7(a). The Form I-130 petition filed on behalf of the applicant has been withdrawn by his spouse, the petitioner. The record does not reflect that the applicant's spouse has filed a new Form I-130 petition on behalf of the applicant. In the absence of an underlying approved Form I-130 petition, the Form I-601 waiver application is moot. The appeal of the denial of the waiver must therefore be dismissed as moot.

**ORDER:** The appeal is dismissed.