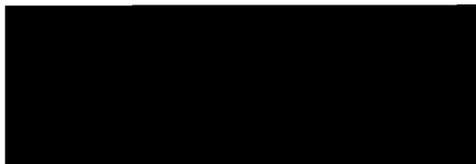


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship and Immigration Services



PUBLIC COPY



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DATE: **MAY 31 2011** Office: PANAMA CITY, PANAMA FILE: 

IN RE: Applicant: 

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.


Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The waiver application was denied by the Field Office Director, Panama City, Panama. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The record reflects that the applicant is a native and citizen of Colombia who was found to be inadmissible to the United States pursuant to section 212(a)(2)(D)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(D)(i), for having engaged in prostitution within ten years of filing for an immigrant visa. The applicant's spouse is a U.S. citizen. The applicant seeks a waiver of inadmissibility in order to reside in the United States.

The field office director concluded that the applicant was not eligible for a waiver of sections 212(h)(1)(A) or (B) of the Act and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated March 6, 2009.

On appeal, the applicant's representative details the hardship that the applicant's spouse would experience due to the applicant's inadmissibility to the United States. *Form I-290B*, received April 8, 2009.

The record includes, but is not limited to, a psychological evaluation and addendum, the applicant's statement and the applicant's spouse's statement. The entire record was reviewed and considered in arriving at a decision on the appeal.

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

Any alien who-

- (i) ...has engaged in prostitution within 10 years of the date of application for...a visa... is inadmissible.

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

(h) The Attorney General [Secretary of Homeland Security] may, in his discretion, waive the application of subparagraph (A)(i)(I), (B), (D) . . . of subsection (a)(2) . . . if -

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

- (i) **the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) . . . 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 is established to the satisfaction of the Attorney General [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 . . .

The record reflects that the applicant admitted to working as a prostitute in [REDACTED] for three months, in Aruba for three months and in Panama for 15 days. The latest date of her engagement in prostitution was in 2005. Therefore, the applicant is inadmissible under section 212(a)(2)(D)(i) of the Act and is required to establish eligibility for a waiver under the standard of section 212(h)(1)(A) of the Act. The decision mentions that the applicant answered in the negative on her Form DS-230, Part II as to whether she had engaged in prostitution within the last 10 years. However, the field office director did not find her inadmissible for committing fraud or willful misrepresentation of a material fact under section 212(a)(6)(C)(i) of the Act. The AAO notes that she appears to have issued a timely retraction of her incorrect answer on her Form DS-230, Part II during her immigrant visa interview.¹ In addition, the field office director mentions that the applicant listed N/A on her Form I-601 and report of interview memorandum in regard to her ground of inadmissibility. The AAO notes that the applicant submitted a Form I-601, which reflects that she is not attempting to conceal that she is inadmissible to the United States. As such, is not inadmissible under section 212(a)(6)(C)(i) of the Act.

In examining whether the applicant is eligible for a waiver, the AAO will assess whether she meets the requirements of section 212(h)(1)(A) of the Act. As the applicant is only inadmissible under section 212(a)(2)(D)(i) of the Act, she meets the requirement of section 212(h)(1)(A)(i) of the Act.

The record does not reflect that admitting the applicant would be contrary to the national welfare, safety, or security of the United States. The applicant states that her spouse provides for her. The psychotherapist's evaluation reflects that the applicant's spouse works as a pipefitter for a piping company. The record reflects that the applicant has not engaged in prostitution since 2005. There is no

¹ The AAO finds Title 9, Section 40.63, Note 4.6 of the Foreign Affairs Manual persuasive. It states:

A timely retraction will serve to purge a misrepresentation and remove it from further consideration as a ground for INA 212(a)(6)(C)(i) inadmissibility. Whether a retraction is timely depends on the circumstances of the particular case. In general, it should be made at the first opportunity. If the applicant has personally appeared and been interviewed, the retraction must have been made during that interview.

evidence that the applicant has been involved in any criminal behavior since then. In addition, there is no indication that the applicant is involved with terrorist-related activities. Accordingly, the applicant has shown that she meets the requirement of section 212(h)(1)(A)(ii) of the Act.

The applicant has shown by a preponderance of the evidence that she has been rehabilitated per section 212(h)(1)(A)(iii) of the Act. As discussed above, there is no evidence that the applicant has engaged in prostitution since 2005 or has been involved in any criminal behavior since then. The applicant has been married to her spouse since May 14, 2005 and the record reflects that she has a daughter. Counsel claims that the applicant is studying nursing. The AAO notes that counsel's claim is not supported by documentary evidence. The record does not reflect that the applicant has a propensity to engage in further criminal activity. Accordingly, the applicant has shown that she meets the requirement of section 212(h)(1)(A)(iii) of the Act.

Based on the foregoing, the applicant has shown that she is eligible for consideration for a waiver under section 212(h)(1)(A) of the Act.

The granting of the waiver is discretionary in nature. The favorable factors include the applicant's U.S. citizen spouse, hardship to her spouse and her lack of a criminal record.

The unfavorable factors include the applicant's engagement in prostitution.

Although the applicant's violations are serious and cannot be condoned, the AAO finds that the applicant has established that the favorable factors in her application outweigh the unfavorable factor.

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.