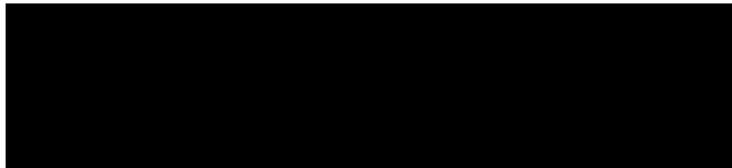


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**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



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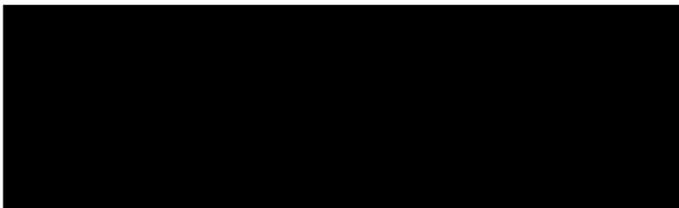
H<sub>2</sub>

Date: **SEP 02 2011** Office: NEW YORK 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.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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 \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

*Michael Shumway*

for Perry Rhew  
Chief, Administrative Appeals Office

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

The applicant is a native and citizen of the Dominican Republic who was found to be inadmissible to the United States pursuant to section 212(a)(2)(D)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(D)(iii), for being an individual who is coming to the United States to engage in an unlawful commercialized vice. She seeks a waiver of inadmissibility in order to reside in the United States with her U.S. citizen husband.

The director denied the Form I-601 application for a waiver, finding that the applicant failed to establish extreme hardship to her husband. *Decision of the Director*, dated June 29, 2009.

On appeal, counsel for the applicant asserts that the applicant has shown that her husband will suffer extreme hardship should the present waiver application be denied. *Brief from Counsel*, dated July 28, 2009.

The record contains, but is not limited to: a brief from counsel; statements from the applicant's husband; a medical letter and prescriptions for the applicant's husband; documentation associated with the applicant's husband's employment; copies of some of the applicant's bills; and documentation of the applicant's criminal history. The entire record was reviewed and considered in rendering this decision.

As a preliminary matter, the applicant filed a Form I-485 application to adjust her status to lawful permanent resident on or about December 8, 2008. The applicant filed the present Form I-601 application for a waiver on or about June 24, 2009 due to a finding that she is inadmissible under section 212(a)(2)(D)(iii) of the Act. The director denied the Form I-485 application on June 29, 2009. In her decision, the director identified two separate reasons for denying the application - the applicant's failure to obtain a waiver of her inadmissibility under section 212(a)(2)(D)(iii) of the Act and her failure to show that she warrants a favorable exercise of discretion. The director emphasized that the discretionary basis for the denial was independent of the applicant's inadmissibility.

The director informed the applicant of the requirements for filing a motion to reopen or motion to reconsider the denial of the Form I-485 application, as provided in the regulation at 8 C.F.R. § 103.5. However, the record does not show that the applicant filed a motion with the director, and the denial of the Form I-485 application remains effective.

The present Form I-601 application for a waiver was filed incident to the applicant's Form I-485 application, in order to establish that she is admissible to the United States and eligible to adjust her status to lawful permanent resident. Yet, even should the applicant obtain a waiver of her inadmissibility under section 212(a)(2)(D)(iii) of the Act, the discretionary basis for the denial of her Form I-485 application would remain. The AAO lacks jurisdiction to review the director's denial of

the applicant's Form I-485 application as an exercise of discretion.<sup>1</sup> Therefore, no purpose would be served in fully assessing whether the applicant has shown that she is eligible for a waiver of her inadmissibility under section 212(a)(2)(D)(iii) of the Act or all other grounds of inadmissibility to which she may be subject. However, the AAO will comment on the director's decision and a further ground of inadmissibility raised by the record.

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

Prostitution and Commercialized Vice

Any alien who-

...

(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 has pled guilty to multiple offenses related to illegal gambling, including: Disorderly Conduct under New York Penal Law § 240.20 on [REDACTED] 1998 after being charged with Possession of Gambling Records in the 2<sup>nd</sup> Degree under New York Penal Law § 225.15 and Promoting Gambling in the 2<sup>nd</sup> Degree under New York Penal Law § 225.05; Attempted Possession of Gambling Records in the 2<sup>nd</sup> Degree under New York Penal Law § 110-225.15 on [REDACTED] 2006; Possession of Gambling Records in the 2<sup>nd</sup> Degree under New York Penal Law § 225.15 on [REDACTED] 2006; and Promoting Gambling in the 2<sup>nd</sup> Degree under New York Penal Law § 225.05 on [REDACTED] 2007. Based on this lengthy pattern of engaging in activities related to illegal gambling, the director found that the applicant is seeking admission to the United States "to engage in [an] unlawful commercialized vice", and thus she is inadmissible under section 212(a)(2)(D)(iii) of the Act. The applicant does not contest her inadmissibility under section 212(a)(2)(D)(iii) of the Act on appeal.

The AAO concurs that the applicant has not shown that she has ceased her activities related to illegal commercialized gambling. She stated that she previously engaged in gambling activities to support her family, and that her husband now provides economic support. Yet, the applicant has provided documentation of her family's rent obligation of \$1027.74 and a power bill that shows approximate monthly charges of \$115. These two expenses alone total approximately \$13,700 per year. However, the applicant has not claimed that she works, and the most recent income data for her

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<sup>1</sup> The authority to adjudicate appeals is delegated to the AAO by the Secretary of the Department of Homeland Security (DHS) pursuant to the authority vested in him through the Homeland Security Act of 2002, Pub. L. 107-296. See DHS Delegation Number 0150.1 (effective March 1, 2003); see also 8 C.F.R. § 2.1 (2003). The AAO exercises appellate jurisdiction over the matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003).

husband in the record shows that he earned a gross income of \$16,998 in 2007. Thus, the record suggests that the applicant's family has significant income from an undisclosed source, and the record clearly shows that the applicant has sought income in the past through activities related to illegal gambling.

The record further raises the question of whether the applicant is inadmissible under section 212(a)(6)(C)(i) of the Act for gaining admission to the United States by making a material misrepresentation. Section 212(a)(6)(C)(i) of the Act provides, in pertinent part, that:

Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

As noted above, the applicant was convicted of an offense related to her gambling activities on October 7, 1998. She subsequently departed the United States, then reentered on July 18, 2000 in B-2 status and has remained since. The applicant was convicted of three more separate gambling offenses which suggests she intended to return to the United States for the purpose of continuing to reside indefinitely to engage in an unlawful commercialized vice. If the applicant misrepresented her intent to gain entry to the United States in B-2 status, she is also inadmissible under section 212(a)(6)(C)(i) of the Act and she also requires a waiver under section 212(i) of the Act.

However, as discussed above, even should the applicant obtain waivers of all grounds of inadmissibility to which she is subject, the discretionary basis for the denial of her Form I-485 application would remain. As the applicant has not shown that the present Form I-601 application will have an impact on the denial of her Form I-485 application, and the present Form I-601 is incident to the Form I-485 application, no purpose would be served in fully assessing whether the applicant has shown that she is eligible for waivers of inadmissibility. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.