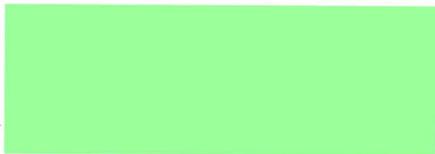




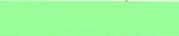
**U.S. Citizenship
and Immigration
Services**

(b)(6)

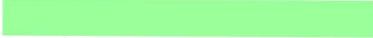


DATE: APR 04 2013

OFFICE: PANAMA CITY, PANAMA

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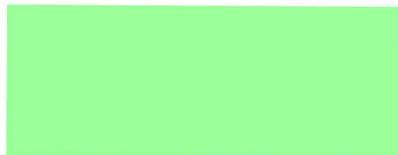
IN RE:

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.

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", with a long horizontal flourish extending to the right.

Ron Rosenberg
Acting Chief, Administrative Appeals Office

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

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) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(D), for engaging in prostitution. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), in order to reside in the United States with her U.S. citizen spouse.

The field office director concluded that the applicant failed to establish either rehabilitation or that extreme hardship would be imposed on a qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *See Decision of the Field Office Director*, dated May 31, 2012.

On appeal, counsel contests inadmissibility and asserts that the applicant has established that she has been rehabilitated, that her spouse would suffer extreme hardship if the waiver is not granted, and that she merits a favorable exercise of discretion. *See Form I-290B, Notice of Appeal or Motion*, received June 25, 2012 and *Counsel's Appeal Brief*, dated July 24, 2012.

The record contains, but is not limited to: Form I-290B, counsel's appeal brief and earlier brief in support of a waiver; various immigration applications and petitions; a hardship letter; a letter from the applicant's mother-in-law; a letter from the applicant; letters of character reference and support; family photographs; letters from two psychologists; military service-related documents; employment and income tax records; and an excerpt from the U.S. State Department's Foreign Affairs Manual. The record also contains numerous Spanish-language documents, most of which appear to relate to educational certifications, which as previously noted by the field office director have not been accompanied by full, certified English translations as required under 8 C.F.R. § 103.2(b)(3).¹ This deficiency has not been addressed or corrected on appeal. Because the required translations have not been submitted for these documents, the AAO will not consider them in this proceeding. The entire record, with the exception of the Spanish-language documents described, was reviewed and considered in rendering this decision on the appeal.

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

(D) *Prostitution and commercialized vice.*—Any alien who—

¹ 8 C.F.R. § 103.2(b)(3). Translations. Any document containing foreign language submitted to United States Citizenship and Immigration Services (USCIS) shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

- (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 record reflects that the applicant disclosed having engaged in prostitution in 2007 and 2008 for a combined total of nine months. She worked as an exotic dancer in three separate clubs over three 3-month periods, to wit: from January 2007 to May 2007 in [REDACTED] from September 2007 to November 2007 in [REDACTED]; and from March 2008 to June 2008 in [REDACTED]. Based on the foregoing, the applicant was found to be inadmissible to the United States under section 212(a)(2)(D) of the Act. Counsel contests inadmissibility, asserting that the applicant's actions do not show continuity and regularity, are not indicative of a pattern of behavior, and thus cannot be construed as a regular pattern of prostitution as defined by 22 C.F.R. §40.24(b). Counsel points to *Matter of Gonzalez-Zoquiapan*, 24 I&N Dec. 549 (BIA 2008) for the proposition that "engaged in prostitution" under former section 212(a)(12) means conduct carried on over a period of time and does not extend to a single act of prostitution. The present case is clearly distinguished from that cited by counsel as the applicant freely admits to having engaged in prostitution not once, but over three separate 3-month periods, in three different clubs, on three different islands, for a total of nine months. The AAO finds that these actions are indicative of continuity, regularity and a pattern of behavior, albeit for a total of nine months over an 18-month period. And while the AAO does not dispute the applicant's stated motive that she "took this job for lack of opportunities" and to aid her sister financially in a time of medical need, this purpose is consistent with "earning a living." Accordingly, the AAO concurs with the field office director's finding that the applicant is inadmissible pursuant to section 212(a)(2)(D) of the Act.

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

- (h) Waiver of subsection (a)(2)(A)(i)(I), (II), (B), (D), and (E).—The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in [her] discretion, waive the application of subparagraphs (D)...of subsection (a)(2) if—

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

(b)(6)

(i) the alien is inadmissible only under subparagraph (D)(i) or (D)(ii) of such subsection...

(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 established to the satisfaction of the [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...

(2) the [Secretary], in [her] discretion, and pursuant to such terms, conditions and procedures as he may by regulations prescribe, has consented to the alien's applying or reapplying for a visa, for admission to the United States, or adjustment of status.

In the present matter, the applicant is inadmissible only under section 212(a)(2)(D)(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. Section 212(h)(1)(A)(ii) of the Act. While the applicant's engagement in prostitution is significant and cannot be condoned, the record does not show that she has ever engaged in violent or dangerous behavior. The record does not show that prostitution is illegal in [redacted] or that the applicant has ever engaged in criminal or illegal activity of any kind in a jurisdiction in which she was present. The record shows that the applicant has been married since May 2010 to her U.S. citizen spouse who refers to her as the one special person for whom he has been searching all his life and with whom he wants to raise a family and spend the rest of his life. The record shows that the applicant's spouse has traveled to Colombia numerous times to visit the applicant, has had employment responsibilities transferred there to spend as much time as possible with her, the applicant has communicated extensively over the internet with her spouse's mother and elderly grandmother, both of whom are anxiously awaiting her arrival in the United States to welcome her to their family and their lives. Numerous attestations by others have been submitted concerning the applicant's good moral character, the authenticity of her marriage, and the beautiful relationship shared between her and her U.S. citizen spouse for whom she provides needed emotional, familial and physical support. The record shows that the applicant has been studying English in anticipation of being admitted to the United States where she intends to seek gainful employment as a nurse and start a family with her spouse. 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. Section 212(h)(1)(A)(iii) of the Act. As discussed above, there is no evidence that she has

engaged in prostitution since 2008. The record shows that she has conducted herself well during the ensuing years, studying nursing and English, providing emotional, physical and familial support to her U.S. citizen while he is alternately separated from her or his close-knit family in the United States, and garnering attestations by others to her good moral character, the authenticity of her marriage, and the positive impact she has had on her spouse's life. The record does not indicate that the applicant has a propensity to engage in further prostitution or in criminal activity of any kind. 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.

In determining whether the applicant warrants a favorable exercise of discretion under section 212(h) of the Act, the Secretary must weigh positive and negative factors in the present case. The negative factor in this case is that the applicant engaged in prostitution, outside of the United States and where it is not illegal, during three distinct 3-month periods for a total of nine months in 2007 and 2008. The positive factors in this case include hardship to the applicant's U.S. citizen spouse as a result of the applicant's inadmissibility; the needed emotional, physical and familial support the applicant provides her U.S. citizen spouse; and that the applicant has never been arrested or convicted of any crime and has not engaged in prostitution since 2008. While the applicant's engagement in prostitution cannot be condoned, the positive factors in this case outweigh the negative factors.

In proceedings for an application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of establishing that the application merits approval remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. In this case, the applicant has met her burden that she merits approval of her application.

ORDER: The appeal is sustained. The application is approved.