



U.S. Citizenship  
and Immigration  
Services

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[Redacted]

Date: **MAR 11 2013**

Office: CALIFORNIA SERVICE CENTER FILE: [Redacted]

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:**

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 that reads "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, California Service Center, denied the waiver application. An appeal of the denial was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion. The motion will be granted, and the underlying application will be approved.

The applicant is a native and citizen of Malaysia, the mother of two United States citizens, and the beneficiary of an approved Form I-140 petition. The applicant 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 offenses related to prostitution. The applicant sought a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h). The director concluded that the applicant had failed to establish that her bar to admission would impose extreme hardship on a qualifying relative, and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly.

In a decision dated August 23, 2010, we found the applicant was inadmissible under section 212(a)(2)(A)(i)(I) of the Act, for having been convicted of committing a crime involving moral turpitude, rather than under 212(a)(2)(D) of the Act for offenses related to prostitution. We found the applicant established extreme hardship to a qualifying relative, but concluded that a favorable exercise of discretion was not warranted.

On motion, counsel contends that new evidence as well as previously submitted evidence demonstrates the applicant merits adjustment of status as a matter of discretion. The new evidence are as follows:

- translation of the applicant's affidavit dated September 21, 2010
- translation of the affidavit of the applicant's employer
- filing receipt for the [REDACTED]
- business licenses
- the applicant's cosmetology license
- proof of home ownership
- a social security statement dated April 29, 2009
- income tax returns for 2006, 2007, 2008, 2009
- pay stubs for the applicant
- a letter from [REDACTED] dated September 8, 2010
- a letter from the director of the [REDACTED] dated September 7, 2010
- a good conduct certificate showing the applicant has no other arrests
- a letter from the applicant's daughter and a letter from her son
- school records for the applicant's daughter and son for the years 2008 – 2010
- letters from colleges and universities

Counsel argues that the applicant pled guilty to crimes which she did not commit because of pressures to get home to her children, anxiety about her husband's immigration problems, and her lack of understanding English and the legal system. Counsel asserts that the applicant's sister, who was the applicant's employer at the place of the arrest, provided an explanation about the applicant's arrests in the submitted affidavit. Counsel argues that even with the arrests, the applicant can establish rehabilitation as her decision to hold the same job after being arrested at her place of

employment reflects that since her arrival in the United States she has worked in the same industry. Counsel contends that if the applicant's business was to promote prostitution she would have had more arrests of this nature. Counsel declares that the applicant pays taxes, has no other arrests since 2005, owns real estate, volunteers, raised two productive members of society, and has shown rehabilitation and remorse. Counsel asserts that the positive factors in the instant case outweigh the negative factors and the adjustment application and Form I-601 should be approved as a matter of discretion.

A motion to reconsider must establish that the decision was based on an incorrect application of law or Service policy. *See* 8 C.F.R. § 103.5(a)(3). A motion to reopen must state new facts. *See* 8 C.F.R. § 103.5(a)(2). As to reconsideration, counsel makes no new arguments that the AAO's decision was based on an incorrect application of law or Service policy.

As to reopening, counsel provides the aforementioned new evidence. The applicant claims in the affidavit dated September 21, 2010 that she is not guilty of the offenses of which she was convicted as she did not know the women giving massages in the beauty salon where she worked were offering sexual favors to customers. The applicant asserts:

In 2004, a man came in and said he wanted a massage. I signaled to one of the women in the back room through a glass partition door, who then met the man at the partition door, where they spoke to each other, and the man went to the back. Two minutes later, police officers came in and arrested three of us. In 2005, a man came to the door and went directly to the back room and was greeted at the partition door by one of the women. Two minutes later, police officers came in and arrested me and the woman the undercover was speaking to. Neither time did I take any money or arrange for any sexual activity to take place. As far as I knew, they only wanted a massage, nothing else.

The applicant asserts that for the 2004 and 2005 arrests, she pled guilty to the crimes because she did not understand English and the public defender and judge only spoke English. She stated that for the 2004 arrest, her translator told her to plead guilty or otherwise she would be sent back to Malaysia. For the 2005 arrest, the applicant contends that the translator told her to plead guilty otherwise she would spend three months in jail. The applicant asserted that at the time of her plea her husband worked out of state, and only three months earlier was released from four months of immigration detention. In the letter the applicant describes her participation in her community, the accomplishments of her children, her marriage, as well as her property ownership and employment.

The applicant's sister asserts in the letter dated September 20, 2010 that she worked at and was part owner of the salon where the applicant was arrested. The applicant's sister states that the applicant worked in the front of the salon, doing hair and facials and greeting customers who came in the door. She asserts that if a customer wanted a massage, the applicant would direct the customer to the back of the salon and never took any money. The applicant's sister states that a massage was \$40, and her business received \$20 per massage. She declares that at the time of her sister's arrests, she and her partner did not know the girls giving massages were offering sexual favors. She asserts: "Whatever money they may have made for any sexual activities that were taking place, they did not give to us."

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The applicant's sister states that after the applicant was arrested in 2005 she bought out her business partner and changed the salon's name to create a new image, and except for her sister, none of the women who previously worked at the salon are there. She asserts that her sister now works as the manager of the salon and warns women not to engage in sexual activities, and since she bought out her partner there have been no arrests.

The director of the [REDACTED] states in the letter dated September 7, 2010 that she has known the applicant's family for ten years, and that the applicant is a nurturing mother to her two children.

The letter from the applicant's daughter dated September 9, 2010 commends the applicant's character, and the letter from the applicant's son dated September 11, 2010 describes the hardships he would endure in relocating to Malaysia with his mother.

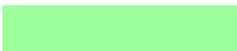
The school records include achievement awards and letters describing community service performed by the applicant's children, and letters from colleges and universities extending offers to the applicant's son to attend their programs.

Upon review of this evidence we find that the new evidence of school records, letters commending the community participation of the applicant's children, as well as the letters from the applicant's children, and from the director of the [REDACTED] does not differ in content to previously submitted evidence. Nor does the evidence of property records, wage statements, the social security statement, and income taxes differ significantly in content from previously submitted evidence. However, the applicant's cosmetology license and affidavit, and her sister's letter and business records are new evidence, warranting the reopening of the applicant's case.

In *Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996), the Board of Immigration Appeals (Board) stated that once eligibility for a waiver is established, an adjudicator must then "balance the adverse factors evidencing an alien's undesirability as a permanent resident with the social and humane considerations presented on the alien's behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of the country." *Id.* at 300. (Citations omitted).

The adverse factors in the present case are the two criminal convictions for promoting prostitution. The favorable factors in the present case are the aforementioned letters commending the applicant's character, the applicant's close relationship with her family members, her ownership of real estate, and the passage of seven years since the convictions rendering the applicant inadmissible to the United States. When we consider the favorable factors in the present case together, they outweigh the adverse factors, such that a favorable exercise of discretion is warranted. Accordingly, the waiver application will be approved.

In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility rests with the applicant. *See* section 291 of the Act. Here, the applicant has now met that burden. The waiver application will be approved.



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**ORDER:** The motion is granted. The waiver application is approved.