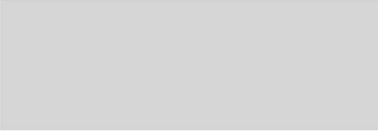


(b)(6)

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



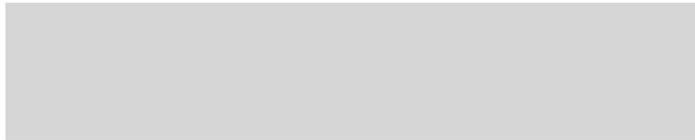
U.S. Citizenship  
and Immigration  
Services



Date: **MAY 27 2015**

FILE: [REDACTED]  
APPLICATION RECEIPT: [REDACTED]

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The District Director, New York, denied the waiver application, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the District Director will be withdrawn, as it has not been established that the applicant is inadmissible pursuant to section 212(a)(2)(D) of the Act. Because the applicant is not inadmissible and a waiver is unnecessary, the appeal will be dismissed.

The record reflects that the applicant is a native of Brazil and citizen of Brazil and Italy, 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 record indicates that the applicant is married to a U.S. citizen and she is the beneficiary of an approved Petition for Alien Relative (Form I-130). 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 husband.

The District Director found that the applicant failed to establish that she had been rehabilitated or that extreme hardship would be imposed on her qualifying spouse and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the District Director*, dated July 31, 2012, and received by the AAO on December 16, 2014.

On appeal, the applicant, through counsel, asserts that she is not inadmissible because she did not engage in prostitution,” as that phrase is defined in U.S. immigration law. She further asserts that if she is inadmissible, she is eligible for a waiver because her admission to the United States would not be contrary to the national welfare, safety or security of the United States and she has been rehabilitated. Finally, she asserts that her qualifying spouse would suffer extreme hardship if she were to be removed from the United States. *Attachment to Form I-290B, Notice of Appeal or Motion*, filed August 31, 2012.

The record includes, but is not limited to, counsel’s brief; identity and relationship documents; statements from the applicant, her qualifying spouse, and relatives; medical documents; police and court records; and a psychological evaluation. The entire record was reviewed and considered in rendering this decision.

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

Prostitution and commercialized vice.—Any alien who—

- (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.

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

The Attorney General [now the Secretary of the Department of Homeland Security (Secretary)] may, in his discretion, waive the application of subparagraphs (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 [Secretary] that—

- (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 his 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.

The record reflects that the applicant was admitted into the United States on February 11, 2007, under the visa waiver program, and she has not departed the United States. According to evidence in the record, on [REDACTED] 2008, the [REDACTED] Police Department arrested the applicant and charged her with one count of prostitution, in violation of New York Penal Law section 230.00. On [REDACTED] 2008, the applicant pled guilty instead to violating New York Penal Law section 240.20, disorderly conduct. On [REDACTED] 2010, the applicant was charged with one count of violating Maryland Criminal Law section CR.10.201(c)(2), disorderly conduct, and one count of section CR.11.306, prostitution. The applicant was convicted of the disorderly conduct charge on [REDACTED], 2011 and the prostitution charge was dismissed in the District Court for [REDACTED], Maryland.

The Field Office Director of the Immigration and Custom Enforcement's Baltimore office ordered the applicant administratively removed under section 217 of the Act on January 28, 2011. On [REDACTED] 2011, while in custody, the applicant married a decorated [REDACTED] police officer, who

subsequently filed a Form I-130 on her behalf. On July 15, 2011, the applicant's Form I-130 was approved. On or about April 10, 2011, the applicant filed a Form I-601, in which she claims she participated in two acts of prostitution out of financial need. On July 13, 2012, the District Director denied the applicant's Form I-601, finding the applicant engaged in prostitution and failed to demonstrate extreme hardship to her U.S. citizen spouse.

Prior to addressing whether the applicant qualifies for the Form I-601 waiver, we must address the issue of inadmissibility. The District Director found the applicant inadmissible to the United States under section 212(a)(2)(D)(i) of the Act. The applicant contests the inadmissibility finding, asserting she did not "engage in prostitution," as that phrase is defined in U.S. immigration law. She states that she engaged in prostitution only twice, because of her family's financial circumstances.

Section 212(a)(2)(D)(i) of the Act renders inadmissible any alien who "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." In her Form I-601, the applicant states she "first did prostitution on [REDACTED] 2008 [and] I committed prostitution again on [REDACTED] 2010." For the applicant to be inadmissible under section 212(a)(2)(D)(i), the applicant must have "engaged in prostitution." Although "[e]ach case must be determined on its own facts . . . the general rule is that to constitute 'engaging in' there must be a substantial, continuous and regular, as distinguished from casual, single or isolated, acts." *Matter of T*, 6 I&N Dec. 474, 477 (BIA 1955); see also *Kepilino v. Gonzales*, 454 F.3d 1057, 1061 (9<sup>th</sup> Cir. 2006).

Therefore, in order for the applicant to have engaged in prostitution, there must be evidence showing that the acts of prostitution were substantial, continuous and regular. The applicant admitted to engaging in prostitution; however, the applicant's statement that she engaged in prostitution on two occasions is insufficient alone to establish that the acts of prostitution were substantial, continuous and regular. The applicant explained that she engaged in prostitution was the result of a desperate temporary need for money to help support her parents. The record fails to establish her acts of prostitution were substantial, continuous or regular. Based on the record, we find that the applicant is not inadmissible to the United States under section 212(a)(2)(D)(i) of the Act and that a waiver is unnecessary.

The record lacks sufficient evidence to support the finding that the applicant engaged in prostitution. As such, the issue of whether the applicant established extreme hardship to a qualifying relative pursuant to section 212(h)(1)(B) is also moot and will not be addressed. The decision of the District Director, therefore, is withdrawn, as the record does not establish that the applicant is inadmissible pursuant to section 212(a)(2)(D)(i) of the Act.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

**ORDER:** The appeal is dismissed, because a waiver is unnecessary.