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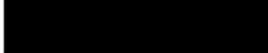


U.S. Citizenship
and Immigration
Services

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FILE: 
MSC-02-255-62130

Office: ATLANTA

Date: **JUL 25 2008**

IN RE: Applicant:



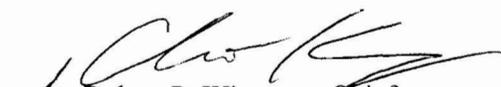
APPLICATION: Application for Waiver of Inadmissibility pursuant to Section 1104 of the Legal Immigration Family Equity (LIFE) Act of 2000, Pub. L. 106-553, 114 Stat. 2762 (2000), *amended by* Life Act Amendments, Pub. L. 106-554, 114 Stat. 2763 (2000).

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained or remanded for further action, you will be contacted.


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The applicant filed a Form I-601, Application for Waiver of Grounds of Excludability (now referred to as inadmissibility). In denying the application, the director determined that the applicant is inadmissible to the United States under section 212(a)(2)(D)(i)-(iii) of the Act, 8 U.S.C. § 1182(a)(2)(D)(i)-(iii), based on her convictions for prostitution related offenses. The director determined that the crimes the applicant committed may not be waived. The director concluded that the applicant is ineligible to receive a waiver of inadmissibility, and denied the application.

On appeal, counsel asserts that section 212(h) of the Act, 8 U.S.C. § 1182(h), allows waivers for crimes involving prostitution if the alien is the spouse, parent, son or daughter of a United States Citizen or Lawful Permanent Resident, and the United States Citizen or Lawful Permanent Resident would suffer extreme hardship if the alien is deported. Counsel states that the applicant has submitted the proper waiver application and she the parent of a United States Citizen who would suffer extreme hardship if the applicant is deported. Counsel submits as supporting documentation: affidavit from the applicant; a notarized letter from the applicant's child, [REDACTED]; a notarized letter from [REDACTED]; and a number of country conditions reports regarding the applicant's country of citizenship, Colombia.

A review of the record shows that on June 12, 2002, the applicant filed a Form I-485, Application to Adjust Status, under section 1104 of the Legal Immigration Family Equity (LIFE) Act. The applicant concurrently submitted a Form I-601, Application for Waiver of Grounds of Excludability, based on her convictions for crimes related to prostitution. The applicant submitted court dispositions that reveal the following:

- On December 7, 1990, the applicant was convicted of *Disorderly Conduct* in violation of section 240.20 of the New York Penal Law (City Court of White Plains, Docket #90-2545). She was sentenced to a fine of \$100.00 and a conditional discharge;
- On September 7, 1994, the applicant was arrested and charged with with *Promoting Prostitution in the Fourth Degree* in violation of section 230.20 of the New York Penal Law (Criminal Court of the City of New York, County of Queens, Docket #94Q031685, Certificate of Disposition #56701). The applicant pled guilty to this offense on September 8, 1994. She was sentenced to 4 days imprisonment;
- On November 7, 1994, the applicant was arrested and charged with *Promoting Prostitution in the Fourth Degree* in violation of section 230.20 of the New York Penal Law (Criminal Court of the City of New York, County of Queens, Docket #94Q041458, Certificate of Disposition #8989). The applicant pled guilty to this offense on November 10, 1994. She was sentenced to a fine of \$500 and 45 days imprisonment;
- On January 31, 1995, the applicant was convicted of *Promoting Prostitution in the Fourth Degree* in violation of section 230.20 of the New York Penal Law (Criminal Court of the City of New York, County of Queens, Docket #95Q000226, Certificate of

Disposition #8988). The applicant was sentenced to a fine of \$150.00 and 30 days imprisonment;

- On May 11, 1995, the applicant was arrested and charged with *Promoting Prostitution in the Fourth Degree* in violation of section 230.20 of the New York Penal Law (Criminal Court of the City of New York, County of Queens, Docket #95Q022970, Certificate of Disposition #8987). The applicant pled guilty to this offense on May 12, 1995;
- On August 30, 1995, the applicant was arrested and charged with *Permitting Prostitution* in violation of section 230.40 of the New York Penal Law (Criminal Court of the City of New York, County of Queens, Docket #95Q039721, Certificate of Disposition #8984). The applicant pled guilty to this offense on August 31, 1995. She was sentenced to a one year conditional discharge; and
- On July 9, 1996, the applicant was convicted of *Promoting Prostitution in the Fourth Degree* in violation of section 230.20 of the New York Penal Law (Criminal Court of the City of New York, County of Queens, Docket #96Q028336, Certificate of Disposition #8985). She was sentenced to 5 days imprisonment.

The director denied the applicant's Form I-601 waiver application on April 11, 2005. In denying the application, the director stated that Citizenship and Immigration Services records indicate the applicant has been convicted of the following offenses: on September 26, 1990, she was arrested and convicted in New York for the offense of *Solicitation*¹; on September 9, 1994, she was convicted in New York for the offense of *Promoting Prostitution*; on January 1, 1995, she was convicted in New York for the offense of *Promoting Prostitution*; and on July 9, 1996, she was convicted in New York for the offense of *Promoting Prostitution*. The director determined that the applicant is inadmissible to the United States pursuant to section 212(a)(2)(D)(i)-(iii) of the Act, 8 U.S.C. § 1182(a)(2)(D)(i)-(iii), based on her convictions for prostitution related offenses. The director determined that the crimes the applicant committed may not be waived. The director concluded that the applicant is ineligible to receive a waiver of inadmissibility.

Section 212(a)(2)(D)(i)-(iii) of the Act, 8 U.S.C. § 1182(a)(2)(D)(i)-(iii), in pertinent part, provides:

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.

¹ The record shows that the applicant was arrested on September 26, 1990 and convicted of *Disorderly Conduct* in violation of section 240.20 of the New York Penal Law.

The director's determination that the applicant is ineligible to receive a waiver of the ground of inadmissibility arising under section 212(a)(2)(D)(i)-(iii) of the Act, 8 U.S.C. § 1182(a)(2)(D)(i)-(iii) is incorrect. Section 1104(c)(2)(D) of the LIFE Act specifically references section 245A(d)(2) of the Act as that section of law to be utilized to determine applicable grounds of inadmissibility and whether a waiver is available to overcome such a finding. Section 245A(d)(2)(B)(i) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(i), permits the Secretary of Homeland Security to waive certain grounds of inadmissibility, including inadmissibility under section 212(a)(2)(D)(i)-(iii) of the Act, "in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest." Congress contemplated that waivers under section 245A of the Act be granted liberally. *Matter of P-*, 19 I&N Dec. 823, 828 (Comm. 1988). Nevertheless, the director's actions must be considered to be harmless error because the applicant is inadmissible under 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I), as an alien who has been convicted of crimes involving moral turpitude. According to section 245A(d)(2)(B)(ii)(I) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(ii)(I), waivers of inadmissibility are precluded for applicants convicted of such crimes.

Crimes involving moral turpitude are generally defined as an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow men or to society in general, contrary to the accepted and customary rule of right and duty between man and man. *See Jordan v. De George*, 341 U.S. 223 (1951); *Matter of Serna*, 20 I&N Dec. 579, 581 (BIA 1992). A crime involving moral turpitude is based on the offender's evil intent or corruption of the mind. *Matter of Serna*, 20 I&N Dec. at 581. The record reveals that the applicant has six convictions for *Promoting Prostitution in the Fourth Degree* in violation of section 230.20 of the New York Penal Law. A person is guilty of *Promoting Prostitution in the Fourth Degree* when he knowingly advances or profits from prostitution. N.Y. Penal Law § 230.20 (McKinney 2008). In addition, the applicant has one conviction for *Permitting Prostitution* in violation of section 230.40 of the New York Penal Law. A person is guilty of *Permitting Prostitution* when, after having possession or control of premises which he knows are being used for prostitution purposes, he fails to make reasonable effort to halt or abate such use. N.Y. Penal Law § 230.40 (McKinney 2008). In *Matter of Lambert* the Board of Immigration Appeals held that a conviction for letting or renting rooms with knowledge that the rooms were to be used for the purpose of lewdness, assignation or prostitution is conviction of a crime involving moral turpitude. 11 I&N Dec. 340, 342 (BIA 1965). The applicant's multiple convictions related to her advancing and profiting from prostitution and permitting prostitution on her premises is analogous to the facts in *Matter of Lambert*. Therefore, it can be determined that the applicant has been convicted of six crimes involving moral turpitude, as such, she is inadmissible to the United States under section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. § 1182(a)(2)(A)(i)(I).

In conclusion, the applicant's six convictions for prostitution related crimes render her inadmissible as an alien who has been convicted of crimes involving moral turpitude. Section 212(a)(2)(A)(i)(I) of the Act, 8 U.S.C. 1182(a)(2)(A)(i)(I). Section 1104(c)(2)(D) of the LIFE Act specifically references section 245A(d)(2) of the Act as that section of law to be utilized to determine applicable grounds of inadmissibility and whether a waiver is available to overcome

such a finding. According to section 245A(d)(2), there is no waiver available for this ground of inadmissibility. *See* Section 245A(d)(2)(B)(ii)(1) of the Act, 8 U.S.C. § 1255a(d)(2)(B)(ii)(I). Thus, the applicant is ineligible for a waiver of inadmissibility, and her appeal is dismissed.

ORDER: The appeal is dismissed. This decision constitutes a final notice of ineligibility.