

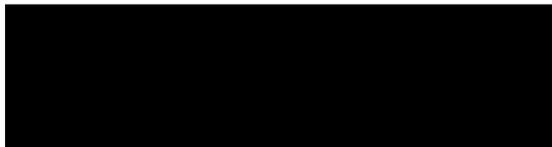


U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



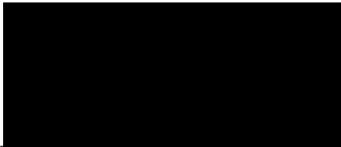
FILE: [Redacted] Office: Hartford (BOS)

Date: MAR 16 2000

IN RE: Applicant: [Redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under § 212(h) of the Immigration and Nationality Act, 8 U.S.C. 1182(h)

IN BEHALF OF APPLICANT:



Public Copy

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the District Director, Boston, Massachusetts, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained. The district director's decision will be withdrawn, and the application will be approved.

The applicant is a native and citizen of the Dominican Republic who was found to be inadmissible to the United States under § 212(a)(2)(D) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a)(2)(D), for having been convicted of engaging in prostitution between July 1994 and March 1996. The applicant married a United States citizen in March 1996 and is the beneficiary of an approved immediate relative visa petition. The applicant seeks a waiver of this permanent bar to admission as provided under § 212(h) of the Act, 8 U.S.C. 1182(h), to reside with her spouse in the United States.

The district director concluded that the applicant had failed to establish that extreme hardship would be imposed upon her husband and denied the application accordingly.

On appeal, counsel discusses the health and emotional status of the applicant's spouse, and the ramifications of the applicant's removal from the United States.

Section 212(a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.-Except as otherwise provided in this Act, aliens who are ineligible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(2) CRIMINAL AND RELATED GROUNDS.-

(D) 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) WAIVER OF SUBSECTION (a)(2)(D).-The Attorney General may, in his discretion, waive application of subparagraph (D) of subsection (a)(2)...if-

(1) (A) in the case of any immigrant it is established to the satisfaction of the Attorney General 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...; and

(2) the Attorney General, 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 for adjustment of status.

The statutes were amended by IMMACT 90 and prostitution was eliminated as grounds for removal (deportation.) The statute also limited the exclusion (inadmissibility) of former prostitutes to aliens who had engaged in prostitution within 10 years of the date of the application for a visa, etc. There is no longer a requirement for an applicant to establish that "extreme hardship" would be imposed on a qualifying relative if the applicant were removed from the United States. The applicant must establish that:

(i) he or she is inadmissible only for engaging in prostitution or procuring or attempting to procure prostitutes;

(ii) his or her admission would not be contrary to the national welfare, safety, or security of the United States; and

(iii) he or she has been rehabilitated.

The record reflects that the applicant and her husband have been married for more than three years, the applicant has helped to keep her husband free from drug and alcohol addiction for more than four years, the applicant has rehabilitated and her admission would not be contrary to the national welfare, safety, or security of the United States.

In proceedings for application for waiver of grounds of inadmissibility under § 212(h), the burden of proving eligibility remains entirely with the applicant. Matter of Ngai, 19 I&N Dec. 245 (Comm. 1984). Here, the applicant has met that burden. Accordingly, the decision of the district director will be withdrawn, and the waiver application will be approved.

**ORDER:** The appeal is sustained. The decision of the district director is withdrawn, and the application is approved.