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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: PORTLAND, OREGON Date: APR 16 2004

IN RE: Applicant: [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:

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

Robert P. Wiemann, Director
Administrative Appeals Office

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

The applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(2)(D)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(2)(D)(ii), for having been convicted for prostitution. The applicant is the beneficiary of an approved petition for alien relative filed by his Lawful Permanent Resident (LPR) father. The applicant seeks a waiver of inadmissibility pursuant to section 212(h) of the Act, 8 U.S.C. § 1182(h), so that he may reside with his LPR parents in the United States.

The Acting District Director concluded that the applicant had failed to show that he has been rehabilitated and denied the waiver in the exercise of discretion. *See Acting District Director's Decision* dated March 20, 2003.

On appeal, counsel asserts that that the applicant is not inadmissible under 212(a)(2)(D) of the Act. Counsel states that section 212(A)(2)(D) of the Act is clearly directed at persons who promote and practice commercialized vice rather than the customers of such activities. Counsel further states that the applicant's conviction for a single act of offering or agreeing to pay a fee to engage in sexual conduct does not render him inadmissible under section 212(a)(2)(D) and refers to several decisions to support his assertion. These decisions are referring to cases that have to do with prostitutes and not with an individual who procured or attempted to procure a prostitute.

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

> (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) of the Act provides, in pertinent part, that:

> (h) The Attorney General [now the Secretary of Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) , (B), (D). . . 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 or the activities for which the alien is inadmissible occurred more than

> 15 years before the date of the alien's application for a visa, admission, or adjustment of status,
>
> (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

The record reflects that on January 28, 1997, the applicant was convicted in the Clackamas County Circuit Court of Oregon for prostitution under ORS 167.007(1)(b) which states that a person who pays or offers or agrees to pay a fee to engage in sexual conduct or sexual contact commits the crime of prostitution.

On appeal counsel asserts that the applicant is not inadmissible under section 212(a)(2)(D) of the Act because section 2121(a)(2)(D) of the Act was clearly intended to apply only to the person who runs the business of prostitution and the prostitutes themselves. Counsel refers to previous Board of Immigration Appeals (BIA) decisions. The BIA decisions counsel refers to deal with prostitutes and are not relevant in the present case.

The applicant was convicted under Oregon law, which clearly states that a person who pays or offers or agrees to pay a fee to engage in sexual conduct or sexual contact commits the crime of prostitution. As stated above the Act states: any alien who directly or indirectly procures or attempts to procure ... prostitutes or persons for the purpose of prostitution ... is inadmissible.

Matter of Khalik, 17 I&N Dec. 518 (BIA 1980), held that the Service cannot go behind the judicial record to determine the guilt or innocence of an alien for a criminal offense. A record of conviction constitutes a conviction for immigration purposes. The applicant can only appeal such a conviction within the court system.

Notwithstanding the arguments on appeal, section 212(a)(2)(D) of the Act is very specific and applicable. In the instant case the applicant was convicted of prostitution and therefore is inadmissible to the United States. In order to be admitted into the United Sates the applicant must obtain a waiver under section 212(h) of the Act and meet the standards therein.

Section 212(h) of the Act provides that a waiver of the bar to admission resulting from section 212(a)(2)(D) of the Act is dependent on either showing that the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status, the admission to the United States would not be contrary to the national welfare, safety, or security of the United States, and the alien has been rehabilitated.

In the present case, the applicant's inadmissibility occurred less that 15 years prior to his application for a visa and although his admission to the United States would not be contrary to the national welfare, safety, or security of the United States, the AAO finds that the applicant has not shown rehabilitation.

The record of proceedings shows that the applicant was arrested on July 28, 2000, for assault and on October 21, 2000, for assault and menacing. On September 25, 2001, the applicant was convicted of careless driving. Although the applicant was never convicted of the assault charges the police reports indicate that he was involved in several altercations with his ex-girlfriend.

Given the applicant's history, the AAO cannot conclude that the applicant has established genuine rehabilitation. In proceedings for application for waiver of grounds of inadmissibility under section 212(h) of the Act, the burden of proving eligibility remains entirely with the applicant. Section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.